No. 89-441

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ROSEMARY MENARD-SANFORD, *et al.*,
Petitioners,

v.

A.H. ROBINS COMPANY, INCORPORATED, *et al.*,
Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PUBLISHED

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 88-1750

IN RE: A. H. ROBINS COMPANY, INCORPORATED,

Debtor,

ROSEMARY MENARD-SANFORD; KAREN VALENZUELA; CONSTANCE MILLER ENGELSBERG; NANCY LAURI ADAMS; CAROLYN HARRIS,

Claimants-Appellants,

versus

RALPH R. MABEY; THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS; THE OFFICIAL UNSECURED CREDITORS COMMITTEE OF A. H. ROBINS COMPANY, INCORPORATED; STANLEY K. JOYNES, III, Legal Representative of the Future Tort Claimants of A. H. Robins Company, Incorporated,

Parties-in-interest,

A. H. ROBINS COMPANY, INCORPORATED,

Debtor-Appellee.

No. 88-1754

IN RE: A. H. ROBINS COMPANY, INCORPORATED,

Debtor,

DONNA OBERG, et al,

Claimants-Appellants,

versus

THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS; THE OFFICIAL UNSECURED CREDITORS COMMITTEE OF A. H, ROBINS COMPANY, INCORPORATED; STANLEY K. JOYNES, III, Legal Representative of the Future Tort Claimants of A. H. Robins Company, Incorporated,

Parties-in-interest,

A. H. ROBINS COMPANY, INCORPORATED,

Debtor-Appellee.

No. 88-1756

IN RE: A. H. ROBINS COMPANY, INCORPORATED,

Debtor,

ALBERT L. SIVLEY,

Claimant-Appellant,

versus

THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS; THE OFFICIAL UNSECURED CREDITORS COMMITTEE OF A. H. ROBINS COMPANY, INCORPORATED; RALPH R. MABEY; STANLEY K. JOYNES, III, Legal Representative of the Future Tort Claimants of A. H. Robins Company, Incorporated,

Parties-in-interest,

A. H. ROBINS COMPANY, INCORPORATED

Debtor-Appellee.

No. 88-1758

IN RE: A. H. ROBINS COMPANY, INCORPORATED,

Debtor,

DIANA BROSCO; CATHERINE CRAWFORD; MARY FISCHER, et al,

Claimants-Appellants,

versus

THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS; THE OFFICIAL UNSECURED CREDITORS COMMITTEE OF A. H. ROBINS COMPANY, INCORPORATED; RALPH R. MABEY; STANLEY K. JOYNES, III, Legal Representative of the Future Tort Claimants of A. H. Robins Company, Incorporated,

Parties-in-interest,

A. H. ROBINS COMPANY, INCORPORATED,

Debtor-Appellee.

No. 88-1759

IN RE: A. H. ROBINS COMPANY, INCORPORATED,

Debtor,

LYNN SCOTT; CAROL LOPEZ, et al,

Claimants-Appellants,

versus

THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS; THE OFFICIAL UNSECURED CREDITORS COMMITTEE OF A. H. ROBINS COMPANY, INCORPORATED; RALPH R. MABEY; STANLEY K. JOYNES, III, Legal Representative of the Future Tort Claimants of A. H. Robins Company, Incorporated,

Parties-in-interest,

A. H. ROBINS COMPANY, INCORPORATED,

Debtor-Appellee.

No. 88-1760

IN RE: A. H. ROBINS COMPANY, INCORPORATED,

Debtor,

ELAINE CUMLEY; LAURA JONES; JEAN ABAD, et al,

Claimants-Appellants,

versus

THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS; THE OFFICIAL UNSECURED CREDITORS COMMITTEE OF A. H. ROBINS COMPANY, INCORPORATED; RALPH R. MABEY; STANLEY K. JOYNES, III, Legal Representative of the Future Tort Claimants of A. H. Robins Company, Incorporated,

Parties-in-interest,

A. H. ROBINS COMPANY, INCORPORATED,

Debtor-Appellee.

No. 88-1763

IN RE: A. H. ROBINS COMPANY, INCORPORATED,

Debtor,

ALEXIA ANDERSON, et al,

Claimant-Appellant,

versus

STANLEY K. JOYNES, III, Legal Representative of the Future Tort Claimants of A. H. Robins Company, Incorporated; THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS; THE OFFICIAL UNSECURED CREDITORS COMMITTEE OF A. H. ROBINS COMPANY, INCORPORATED; RALPH R. MABEY,

Parties-in-interest,

A. H. ROBINS COMPANY, INCORPORATED,

Debtor-Appellee.

No. 88-3602

IN RE: A. H. ROBINS COMPANY, INCORPORATED,

Debtor,

ALEXIA ANDERSON, et al,

Claimant-Appellant,

versus

THE OFFICIAL UNSECURED CREDITORS COMMITTEE OF A. H. ROBINS COMPANY, INCORPORATED; THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS; RALPH R. MABEY; STANLEY K. JOYNES, III, Legal Representative of the Future Tort Claimants of A. H. Robins Company, Incorporated,

Parties-in-interest,

A. H. ROBINS COMPANY, INCORPORATED,

Debtor-Appellee.

Appeals from the United States District Court for the Eastern District of Virginia, at Richmond. Robert R. Merhige, Jr., Senior District Judge. (CA 85-01307-R)

Argued December 6, 1988 Decided June 16, 1989

Before RUSSELL, WIDENER, and CHAPMAN, Circuit Judges.

Alan B. Morrison (Linda Donaldson, PUBLIC CITIZEN LITIGATION GROUP, on brief) for Appellants. James Crawford Roberts (James S. Crockett, Jr., MAYS & VALENTINE; Dennis J. Drebsky, Alesia Ranney-Marinelli, Kirk C. Loos, SKADDEN, ARPS, SLATE, MEAGHER & FLOM; Ralph D. Pittle, MEDICAL LEGAL CONSULTANTS OF WASHINGTON; John T. Baker, BRAGG & DUBOFSKY; Joseph McDowell, III, CULLITY, KELLEY & McDOWELL; W. Bradley Post, POST, SYRIOS & BRADSHAW; Frederic A. Bremseth, DOSHAN, LORD & BREMSETH; Murray Drabkin, CADWALADER, WICKERSHAM & TAFT; Harold S. Novikoff, WACHTELL, LIPTON, ROSEN & KATZ; Henri E. Norris; Stanley K. Joynes, III, RILEE, CANTOR, ARKEMA & EDMONDS; Robert M. Miller, BERLACK, ISRAELS & LIBERMAN; John S. Kinzey, Jr., Steven J. McCardell, LEBOEUF, LAMB, LEIBY & MACRAE, on brief) for Appellees.

WIDENER, Circuit Judge:

On July 26, 1988, the bankruptcy court and the district court jointly confirmed the "Sixth Amended and Restated Plan of Reorganization" (the Plan) submitted by A. H. Robins Company, Inc. (Robins). *In Re A. H. Robins Co, Inc.*, 88 B.R. 742 (E.D. Va. 1988). Rosemary Menard-Sanford and certain other personal injury claimants, who voted against the Plan, appeal. They challenge the district court's approval of the disclosure statement, the district court's use of a one claimant one vote voting procedure, the district court's feasibility finding, and a certain injunction found in the Plan. We affirm.

On August 21, 1985, Robins filed a petition for reorganization relief under Chapter 11 of the Bankruptcy Code. For an explanation of the details surrounding Robins' bankruptcy and some of the resulting litigation, see the district court's opinion in *In Re A. H. Robins Co., Inc.*, 88 B.R. 742 (E.D. Va. 1988), and our other published opinions regarding this bankruptcy.[1]

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[1]*In Re A. H. Robins Co. Inc.*, 88-1753 (heard Dec. 6, 1988)(4th Cir. 1989); *In Re A. H. Robins Co. Inc.*, 88-1755(L) (*Breland* settlement)

(footnote continued)

On April 1, 1988, the district court approved the "Sixth Amended and Restated Disclosure Statement". The appellants argue that the disclosure statement does not contain adequate information. 11 U.S.C. § 1125(b) requires that before solicitation of approval or disagreement of a plan of reorganization the disclosure statement must contain "adequate information" and be approved by the court. 11 U.S.C. § 1125(a)(1) defines "adequate information" as "information of a kind and in sufficient detail as far is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan." The determination of whether the disclosure statement has adequate information is made on a case by case basis and is largely within the discretion of the bankruptcy court. *In the Matter of Texas Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988), cert denied 57 U.S.L.W. 3313 (1988). The challenged disclosure statement began its 261 pages of information with a thorough summary of the complex plan in terms that almost anyone could understand. It explained, among much more, the

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(heard Dec. 6, 1988)(4th Cir. 1989); *In Re A. H. Robins Co. Inc.*, 862 F.2d 1092 (4th Cir. 1988); *In Re A. H. Robins Co. Inc.*, 846 F.2d 267 (4th Cir. 1988); *Maressa v. A. H. Robins Co. Inc.*, 839 F.2d 220 (4th Cir. 1988), cert denied, 57 U.S.L.W. 3231 (1988); *Grady v. A. H. Robins Co. Inc.*, 839 F.2d 198 (4th Cir. 1988), cert dismissed, 57 U.S.L.W. 3186 (1988); *Official Committee of Equity Security Holders v. Mabey*, 832 F.2d 299 (4th Cir. 1987), cert denied, 56 U.S.L.W. 3647 or 3 [sic] (1988); *Beard v. A. H. Robins Co. Inc.*, 828 F.2d 1029 (4th Cir. 1987; *In Re A. H. Robins Co. Inc.*, 828 F.2d 1023 (4th Cir. 1987), cert denied, 56 U.S.L.W. 3648 (1988); *Committee of Dalkon Shield Claimants v. A. H. Robins Co. Inc.*, 828 F.2d 239 (4th Cir. 1987); *Van Arsdale v. Clemo*, 825 F.2d 794 (4th Cir, 1987); *Vancouver Women's Health Soc. v. A. H. Robins Co. Inc.*, 820 F.2d 1359 (4th Cir. 1987); *In Re Beard*, 811 F.2d 818 (4th Cir. 1987); and *A. H, Robins Co. Inc. v. Piccinin*, 788 F.2d 994 (4th Cir. 1986), cert denied, 479 U.S. 876 (1986). See addendum for listing of parties and Dalkon Shield claim numbers.

amount to be put into trust and made available for the payment of claims, the various estimates of how much money was required, a warning that the funds furnished to pay the estimates might not be enough to pay all claims in full, the sources of funding, an explanation of the various funding provisions which depended on the outcome of various appeals, how claims would be handled, the four options for processing claims and the background of the case. The disclosure statement continued with a discussion of the Robins company, the Dalkon Shield, various litigation regarding the Dalkon Shield, the reorganization, the proposed merger with American Home Products Corporation (AHP), the historical stock values of both AHP and Robins, and federal income tax consequences. The final part of the disclosure statement contains actual copies of the Plan, the Claimants Trust Agreement, the Other Claimants Trust Agreement, the Claims Resolution Facility, the Merger Agreement, Aetna's additional insurance policy, AHP's Annual Report, the Liquidation Analysis and biographies of the proposed Trustees.

The appellants contend that the disclosure statement is misleading because it contains a statement that in order to approve the Plan the district court must make a finding that the Plan contains enough money to satisfy all claims in full. They point out that in reality there may not be enough money to cover all claims. The disclosure statement, however, makes that clear to the claimants. It states that "if the Court's estimate turns out to be too low, Robins will not have to make any more money available to pay claims. In addition, the Plan would generally take away your right to recover for Dalkon Shield injuries against any other parties." The disclosure statement later repeats that thought in explicit terms: "[e]stimation is not an exact science. The money available to pay Dalkon Shield claims may prove to be more or less than the actual value of such claims. If the estimation decision underestimated

the value of the claims, there may not be enough money for the Claimants Trust to pay all claims in full." Thus, we think appellants' contention is without merit.

The appellants' principal challenge to the disclosure statement, however, is that it is inadequate because it does not contain ranges of recovery for claimants with specified injuries. The disclosure statement notes that "[t]here is no certain way to predict the amount that you could receive under option 3. Each claim is different, Factors that affect the value of a claim include the nature of the injury, the medical evidence available to prove the injury, the medical evidence to prove Dalkon Shield use, the presence of other causes of your injury, how long ago you were injured, and what steps you took to enforce your legal rights after your injury became apparent." There is no requirement in case law or statute that a disclosure statement estimate the value of specific unliquidated tort claims. In fact, with so many various unliquidated personal injury claims which vary so much in the extent and nature of injury, medical evidence and causation factors, any specific estimates may well have been more confusing than helpful and certainly would be more calculated to mislead. Given the quantity and quality of the information in the disclosure statement we can not say that the district court abused its discretion in finding that it contained "adequate information."

The appellants next challenge the legality of the voting procedure used to confirm the Plan. The difficulty surrounding the voting procedure resulted from the 195,000 unliquidated claims for personal injuries (Dalkon Shield Claims). The controlling legal provisions for the reorganization include 11 U.S.C. § 1126(a) which provides that a "holder of a claim or interest allowed under section 502 of this title" is entitled to vote on the acceptance of a plan. 11 U.S.C. § 502(a) provides that a claim filed "is deemed allowed unless a party in interest"

objects. Robins objected to all the Dalkon Shield Claims. B.R. 3018(a) provides that "[n]otwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan." The district court, after notice and a hearing, ordered that, for purposes of voting, each Dalkon Shield Claim was estimated and allowed to be equal. It found, fully supported by the record, that any attempt to evaluate each of the 195,000 individual claims for voting purposes would cause intolerable delay. The challenge to the voting procedure relies on 11 U.S.C. § 1126(c) which requires that for a plan to be approved by a class the creditors "that hold at least two-thirds in amount and more than one-half in number" accept the plan. The argument is that § 1126(c) requires use of a weighted voting method which estimates the value of the claims and gives larger claims more votes.

We do not decide whether the district court's voting procedure violated § 1126(c) because, in view of the outcome of the vote, the challenged procedure was at most harmless error. 139,605 claimants voted. Of that 131,761 (94.38%) voted in favor of the Plan. In *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 641-647 (2d Cir. 1988),[2] the district court, faced with 52,440 unliquidated personal injury claims, assigned each claim the value of one dollar for voting purposes. 95.8% of those claims voted to approve the plan. The Second Circuit in reviewing the decision did not decide whether the equal voting plan was error and decided instead that the alleged irregularities were at most harmless error. Given that 94.38%

[2]We have previously noted the "striking similarity both factually and on the legal issues" of the *Robins* and *Johns-Manville* cases. *A. H. Robins Co. Inc. v. Piccinin*, 788 F.2d 994, 1007 (4th Cir. 1986), cert denied, 479 U.S. 876 (1986).

of the Dalkon Shield Claimants voted for the Plan, we hold that, at most, harmless error was committed.[3]

Appellants' next point on appeal is that the district court erred in finding that the Plan complied with 11 U.S.C. § 1129(a)(7)(A)(ii) which requires that an impaired class of claims such as the Dalkon Shield claimants must "receive. . . under the Plan. . .property of a value . . .that is not less than the amount that. . .[they would] receive. . .if the debtor were liquidated under Chapter 7" and § 1129(a)(11) which requires that confirmation is not likely to be followed by liquidation or the need for further reorganization. This latter is called the feasibility requirement.

Both such complaints are based on the "same source: the failure of the district court to break out the components of the $2.475 billion figure." The argument is that since the figure was not broken down, if it turned out to be too low, then the Plan would not be feasible because it could not pay all the claimants in full, which, as the appellants note, is an assump-

[3]We are not persuaded by the argument that the 5.62% NO votes were from the claimants with the largest claims, that being necessary of course to make up more than one-third of the claims in amount. The argument goes that such claimants have the most to gain from a rejection of the plan, but that proposition, we think, is not only supported by no evidence, it is not supported by logic, and is no more likely than the fact that the largest claimants have the most to lose by a rejection of the Plan. Indeed, it would seem that the latter is the more likely if one must choose between the two. Appellants take no exception to the findings of the district court that the liquidation value of the company is considerably less than its value in reorganization, and the part allocated to the claims of the Dalkon Shield claimants is considerably less, $2.5+ billion under the Plan as opposed to $1.6+ in liquidation. So, with a rejection of the Plan which resulted in liquidation, the largest claimants would be the biggest losers. We remain convinced, in view of the 94.38% affirmative vote, that had a weighted voting system been practicable and utilized, the required two-thirds in amount would have approved the Plan. It follows that the error, if any, is harmless.

tion of the Plan and the disclosure statement. The appellants thus complain about the same fact again, except in slightly different context. In all events, we think there is no merit to the claim, but that the care the district court took in arriving at its estimate deserves mention.

The challenged findings are based on an estimation process that the district court undertook as a result of our decision in *A. H. Robins Co., Inc. v. Piccinin*, 788 F.2d 944, 1013 (4th Cir. 1986), cert denied 479 U.S. 876 (1986). In *Piccinin*, we stated that due to the large number of unliquidated claims that if each claim was tried the process itself "would likely consume all the assets of the debtor." *Id.* We suggested that the bankruptcy court "arrive at a fair estimation of the value of all the claims." *Id.* To assist in the estimation process the district court appointed Professor Francis E. McGovern, who was familiar with such matters, as the court's expert to develop a data base regarding Dalkon Shield Claims. The Dalkon Shield Claimant's Committee, the Unsecured Creditor's Committee, the Future Claimant's Representative, the Equity Security Holder's Committee, Robins and Aetna all had experts to assist Professor McGovern. The data base included the results of a two page "Dalkon Shield Questionnaire and Claim Form" from more than 195,000 claimants. It also contained roughly 6,000 responses to a fifty page, "McGovern Survey Questionnaire" and medical records from a random sample of 7,500 claimants. The data collection process lasted more than a year and a half. Each of the experts hired by the various parties used the basic data in various ways to arrive at an estimation.

The district court conducted an estimation hearing from November 5, 1987 to November 11, 1987. At the hearing the parties' various experts testified. The district court considered that the testimony of the various experts estimated the claims as follows: Robins'—.8 to 1.3 billion, Equity Security

Holders'—1.03 billion, Unsecured Creditors'—1.54 billion, Aetna's'—2.2 to 2.5 billion, and the Dalkon Shield Claimants'—4.2 to 7 billion. The district court decided that the proper estimate was 2.475 billion.[4]

At this point it is well to relate somewhat more fully the procedure used in arriving at the estimate found by the district court. As the district court noted, the testimony as to the estimated recovery value of the Dalkon Shield claims ranged from 600 [sic] million to 7 billion dollars. The testimony with respect to the 7 billion dollar figure, however, was not credited by the court.

Professor McGovern was assisted by the experts mentioned representing each of the interests involved in this case, and the procedural steps which were taken were all done by consensus among the experts representing all of the interests, so that the conclusions which the various experts drew from the evidence or the findings of the court from the evidence were the only things left open to exception.

As has been previously mentioned from time to time in the reports of these cases, the district court entered a bar date on claims and prescribed a very informal method of advising the court that a claim was being filed. The bar date of course limited the potential claimants. From these potential claimants, there were eliminated, by standard statistical and analytical methods, about one-third of the initial claims which had been filed. A detailed analysis of those claims not eliminated was performed by sending the detailed questionnaire previously mentioned to a randomly selected sample of several thousand

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[4]We note that the district court's figure was within the range of the second highest estimation—that of Dr. Francine F. Rabinovitz, the expert for Aetna. The district court repeatedly rejected the credibility of the expert for the Dalkon Shield Claimants, the only expert with a higher estimation than Dr. Rabinovitz.

of the claims remaining. The questionnaire asked for information, which, in the most general sense, was received back, concerning the insertion of the Dalkon Shield in the claimant and the nature of the claimant's injuries, including verification by way of medical records where possible.

A detailed analysis of all of the responses was then performed by the expert witnesses who testified in the case. A good example of competent testimony was that of Dr. Francine F. Rabinovitz, who testified on behalf of Aetna. We illustrate with her testimony because her conclusions more nearly match the conclusions of the district court than any other single witness offered. She took the returned questionnaires as a representative sample and weeded out those, for example, with no medical proof of use of the Dalkon Shield. As a further example, she classified the claims into those with and without complications and the nature of the injuries claimed. She took a further random sample of the claims as she had divided them up and got three Aetna claims adjusters who had been experienced in the actual adjustment of Dalkon Shield claims and instructed those adjusters to set a value on a sample of the claims she referred to them, considering that there was liability, so the only thing the adjusters had to consider in setting a value on a claim was the nature of the injury and of course the proof required and the attendant expenses. The adjusters were instructed not to place a low estimate on the claims. Dr. Rabinovitz, by using this method, drew the conclusion that the compensation necessary, assuming that documentation that use of the Dalkon Shield were a prerequisite, would be in excess of 1.9 billion dollars, and, assuming that documentation would not be a prerequisite, a sum in excess of 2.4 billion dollars. To these sums, she would have added modest payments to all active claimants, whatever the merit of such claims, and 50 million dollars as a reserve against future injuries, which made her figures for documented injuries at slight-

ly more than 2.0 billion dollars and for undocumented injuries slightly more than 2.5 billion dollars. Dr. Rabinovitz further concluded that she thought there might be a considerable reduction from disallowance of claims and that she would reasonably anticipate the total indemnity of the obligation to be 2.2 to 2.3 billion dollars. That some reduction is not unreasonable is illustrated by a remark we have come across in the record that one claimant apparently said she took two Dalkon Shields a day.

From our brief recital of a small part of the evidence before the district court, we see that its finding of 2.475 billion dollars as the estimate to include all Dalkon Shield claims is not clearly erroneous under Rule 8013. Indeed, we think the district court would have been quite justified in accepting Dr. Rabinovitz' testimony, so appellants may not complain about the district court's arrival at a somewhat higher figure.

Finally, the appellants challenge as without the power of the bankruptcy court the portion of the Plan which requires the injunction of suits that have connection to the Dalkon Shield, against certain entities other than Robins. Robins argues that the injunction is a proper exercise of the district court's power to channel claims to a specific *res* or alternately that the injunction is proper because 94.38% of the claimants voted for the Plan and thereby consented to the injunction. We affirm, but our reasoning differs somewhat from that of Robins, although its position, of course, should enter into consideration. The suits in question which some of the appellants wish to bring are against Robins' directors, Robins' and Aetna's attorneys, and Aetna, seeking to hold them as joint tortfeasors with Robins for Dalkon Shield injuries.

We begin our discussion by considering the impact of our decision in *In Re: A. H. Robins Company Inc.*, 88-1755(L) (*Breland* settlement), decided this date, on this challenge to

the Plan's injunction. In *Breland*, we affirmed the district court's certification of a mandatory non-opt-out class for members of class A and a class which allows an opt-out for compensatory damages for members of class B. Class A is defined as those Dalkon Shield claimants who met the filing deadlines of the district court and therefore have a non-subordinated claim against the trust fund set up for the claimants in the Robins' reorganization. Class B is defined as those Dalkon Shield claimants who did not meet the filing deadline or like procedural requirements and are therefore not eligible for a nonsubordinated recovery from the trust fund for reasons not related to the abstract merits of the claims. The *Breland* settlement, however, provided all class B claimants with a second chance to pursue their Dalkon Shield claims by staying in the class and applying to the Claims Resolution Facility.[5] For class B members the merits of their Dalkon Shield claims would be determined in the same method as is in place to determine class A members' claims except they would have no right to a jury trial. Their claims would be paid by the two Outlier policies issued by Aetna which provide for $100,000,000 to pay such claims.[6] No party challenges the adequacy of the Outlier policies to pay the class B claims. We

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[5]All claimants, both class A and B, are seeking to recover for injuries caused by use of the Dalkon Shield. The class B claimants were barred from non-subordinated recovery from the trust fund set up by the debtor generally because they failed to file in time . They turned to alternative defendants, which they allege are joint-tortfeasors, for recovery for their Dalkon Shield claims.

[6]In addition to the $100,000,000 total of the Outlier policies, if there is excess coverage under the $250,000,000 Primary Excess Policy, it becomes an excess layer policy to the Outlier Policies. This, as well as the participation of class B claimants in any excess of the trust fund, provides possible additional layers of protection to the class B claimants. Since there is no challenge we do not address the legal or factual strength of their claims. The district court, in its order approving the *Breland* settlement, found the claims against Aetna to be weak both factually and legally.

therefore are entitled to and do assume that the claims of all class B claimants who wish to have the merits and amount of their claims ascertained by the Claims Resolution Facility will be fully satisfied. However, the *Breland* settlement, in conjunction with the Plan, did not force the class B claimants who chose to opt-out to stay within the settlement. They could elect to forgo the benefits of the settlement and retain their right to sue Aetna and to sue medical providers for malpractice.[7] In *Breland*, we also approved the class action settlement, which expressly bars the members of class A and the members of class B who did not opt-out from further prosecuting their Dalkon Shield claims other than pursuant to the terms of the settlement. Given this bar from pursuing compensation for their Dalkon Shield injuries, other than pursuant to the order, the injunction complained of has no real effect on the rights of members of class A and the members of class B who have not exercised their right to opt-out.

The Plan's injunction, therefore, only has real impact upon members of Class B who have elected to opt-out of the Breland settlement. The injunction under sections 1.85 and 8.04 of the Plan prevents these claimants from suing all third parties other than "insurer[s]" (which includes Aetna) and claims based exclusively on medical malpractice. The class B members who have elected to opt-out, it is remembered, claim to have causes of action as joint tortfeasors with Robins against Robins' directors, Aetna, and law firms who represented both Robins and Aetna. A suit against any of the parties mentioned by the class B opt-out members would affect the bankruptcy reorganization in one way or another such as by way of indemnity or contribution. See *A. H. Robins Co. Inc. v. Piccinin*, 788 F.2d 994 (4th Cir. 1986), cert denied, 479 U.S.

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[7]There are approximately 111,000 class B claims, and only 2,960 exercised their right to opt-out.

876 (1986). And, in all events, provision for payment in full of all class B claimants has been made.

Bankruptcy courts are courts of equity. See *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 527 (1984). 11 U.S.C. § 105(a) gives a bankruptcy court the power to issue "any order, process or judgment that is necessary or appropriate to carry out the provisions of this title," and confers equitable powers upon the bankruptcy courts. *In Matter of Old Orchard Inv. Co.*, 31 B.R. 599 (W.D. Mich, 1983). Given the impact of the proposed suits on the bankruptcy reorganization and the fact that the class B members who chose to opt-out could have had their claims fully satisfied by staying within the settlement, the bankruptcy court's equitable powers support the questioned injunction. We think the ancient but very much alive doctrine of marshalling of assets is analogous here. A creditor has no right to choose which of two funds will pay his claim. The bankruptcy court has the power to order a creditor who has two funds to satisfy his debt to resort to the fund that will not defeat other creditors. *Columbia Bank for Cooperatives v. Lee*, 368 F.2d 934, 939 (4th Cir. 1966), cert denied, 386 U.S. 992 (1967); *IV Minor's Institutes* 1248 (1883). Here, the carefully-designed reorganization of Robins, in conjunction with the settlement in *Breland*, provided for satisfaction of the class B claimants. However, some chose to opt-out of the settlement in order to pursue recovery for their injuries from Aetna or from medical providers for malpractice. It is essential to the reorganization that these opt-out plaintiffs either resort to the source of funds provided for them in the Plan and *Breland* settlement or not be permitted to interfere with the reorganization and thus with all the other creditors. Since they have chosen opt-out rather than payment in full, they may have no complaint about a restriction placed on their ability to sue others. Permitting a suit by them in violation of the Plan is a defeat of the Plan and a resulting defeat of the other creditors.

"Particularly since the insurance settlement/injunction arrangement was essential in this case to a workable reorganization, it falls within the bankruptcy court's equitable powers 'which traditionally have been invoked to the end that. . . substance will not give way to form, that technical considerations will not prevent substantial justice.'" *MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 94 (2nd Cir. 1988), cert denied, 57 U.S.L.W. 3235, quoting *In re U.N.R. Industries. Inc.*, 725 F.2d 1111, 1119 (7th Cir. 1984).

The appellants finally contend that 11 U.S.C. § 524(e) prohibits the injunction. Section 524(e) states that "[e]xcept as provided in subsection (a)(3) of this section,[8] discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." Some courts have held that § 524(e) and its predecessor, § 16 of the 1898 Bankruptcy Act, results in the bankruptcy court having no power to discharge liabilities of a nondebtor pursuant to the consent of creditors as a part of a reorganization plan. See *Underhill v. Royal*, 769 F.2d 1426, 1432 (9th Cir. 1985); *Union Carbide Corp. v. Newboles*, 686 F.2d 593 (7th Cir. 1982). However, the Fifth Circuit has stated that "[a]lthough section 524 has generally been interpreted to preclude release of guarantors by a bankruptcy court, the statute does not by its specific words preclude the discharge of a guaranty when it has been accepted and confirmed as an integral part of reorganization." *Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1050 (5th Cir. 1987).[9]

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[8]Subsection (a)(3) deals with community property of spouses and is not applicable.

[9]The court did not decide the issue but assumed without deciding there was a jurisdictional question under § 524 as to the authority of the bankruptcy court to release non-debtors. *Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1051 at n.5. (5th Cir. 1987).

We find the language used by the Fifth Circuit persuasive. Whatever the result might be as to the application of § 524(e) in other cases, we do not think that section must be literally applied in every case as a prohibition on the power of the bankruptcy courts, as appellants would have us apply it here. In this situation where the Plan was overwhelmingly approved, where the Plan in conjunction with insurance policies provided as a part of a plan of reorganization gives a second chance for even late claimants to recover where, nevertheless, some have chosen not to take part in the settlement in order to retain rights to sue certain other parties, and where the entire reorganization hinges on the debtor being free from indirect claims such as suits against parties who would have indemnity or contribution claims against the debtor, we do not construe 524(e) so that it limits the equitable power of the bankruptcy court to enjoin the questioned suits. We leave questions concerning cases in which § 524(e) does apply for another day.

The orders of the district court appealed from are accordingly

AFFIRMED.

*ADDENDUM

APPEAL NUMBER	APPELLANT	DALKON SHIELD NUMBER
88-1750	Rosemary Menard-Sanford	82114
	Karen Velenzuela	82207
	Constance Miller Engelsberg	82142
	Nancy Lauri Adams	82174
	Carolyn Harris	303631
88-1754	Mary Albert	252684
	Carol Angus	215751
	Judith Beaule	62242
	Janis Belcher	237565
	Daniel Belcher	237566
	Karen Belcher	237564
	David Belcher	243035
	Melanie Bennett	183837
	Nancy Benson	191191
	Jean Boeckler	122207
	John Boeckler	122208
	Janet Bruce	296254
	Melody Cannon	228522
	Barbara L. Carr	20475
	David W. Carr	244903
	Helen Carty	78400
	Sandra Cassier	7647
	Patrick Cassier	7646
	Victoria Charnock	228521
	Ellen Chodes	42705
	Elizabeth Cote	26935
	Brenda Davis	111886
	Marion DuFord	78493
	Deborah Fallon	80309
	John Fallon	80310
	Dawn Gebo	7306
	Janet Gregory	79226
	Frank Gregory	79225
	Sarah E. Haskell	78399

APPEAL NUMBER	APPELLANT	DALKON SHIELD NUMBER
88-1754 (continued)	Pamela Hockenbull	78909
	Patricia Johnson	78581
	Mary E. Jordan	291790
	April Weeks-Korn	78397
	Leonard Korn	78398
	Debora Lamont	96144
	Beverly McClure	80313
	Katherine Maher	19424
	Elaine Nizza	228523
	Donna Oberg	77966
	Diane Pinard	7113
	Jeanne Robey	237567
	Paul Robey	237568
	Pamela Saxby	78580
	Shellie Shapiro	78583
	Howard Shapiro	78582
	Sharon Lee Spern	187651
	Rebecca Steinbach	281041
	Jeannette Sweet	85890
	Beverly Tonkin	184469
	Donna Tshanakas	222583
	Nicholas Tshanakas	222584
	Daphne Whitmore	78910
	Linda Bisson	172492
	Anne Soucy	286513
	Sally Adams	225908
	Randy Adams	225886
	Charlotte Allen	227324
	Charles Allen	225896
	Jan Allen	225897
	Barbara Bill Klinger	225899
	Linda Brust	225323
	Virginia Bryan Roberts	225901
	Gwendolyn E. Buettner	70274
	Carolyn Campbell	225900
	Lynn Crosby	225902
	William Franklin Crosby	233041
	Mary Kathryn Deemer	235677
	John Deemer	225885

APPEAL NUMBER	APPELLANT	DALKON SHIELD NUMBER
88-1754 (continued)	Donna Faremouth	260787
	Charles Faremouth	260788
	Cindy Franco	225884
	Fred Franco	231644
	Elena Friedman	225893
	Darleene L. Frink	226609
	Kenneth Frink	225964
	Diane Goshorn	113174
	Christiane J. Guignard	219368
	Linda Harre	225883
	William Harre	225894
	June Ellen Harris	225895
	Carol Harterink	225903
	Anton Harterink	225904
	Rosanne Heard	225905
	Jimmie Dale Heard	225906
	Atha Henderson	225907
	Jill Campion Huff	233339
	Pamela Johnson	7353
	Ted Johnson	7356
	Wanda Lancaster	6020
	Deborah Jean Lenzi	225485
	Betty Leobold	225486
	William D. Leobold	235694
	Susan Lippner	225890
	Robert Lippner	2258
	Victoria L. McCord	225888
	Cheryl McFarland	192508
	Dayna McKendree	225887
	Diane Mance Zywotko	225892
	Carol Mitchell	225891
	Susan Nehrig Cole	46096
	Paul Nehrig	46097
	Deloris A. Nicolaou	255933
	Sherry Peavy	225322
	Kennetb Peavy	225488
	Flora Poe	109594
	Brenda Reilly	225489
	Gerald Reilly	225490

APPEAL NUMBER	APPELLANT	DALKON SHIELD NUMBER
	Patricia Scolaro	225491
	Edward Scolaro	235693
	Wanda Joe Selvanik	225492
	Michael Selvanik	225487
	Janice Denise Simmons	7355
	Merrick Simmons	7354
	Martha E. Sims	225483
	Eslyn South	189220
	Tracy Staneart	176376
	Debra Renee Thompson	225321
	Denise B. Wax	225946
	Dan Wax	234731
	Rachael O. Thompson	200369
	Edwin L. Wilbur	202442
	Sharon Malloy Wilber	201016
	Harold E. Kerkhoff, Jr.	200370
	Robert F. Grant, Deceased	200373
	Robert W. Adams	200368
	Gillian L. Adams	200367
	Mr. R. S. Shaw	285422
	Blanche M. Shaw	202439
	Donna M. Kerkhoff	200375
	Kathleen A. Denise	62658
	Jim H. James	200366
	Beatrice D. Sewell	200374
	Kenneth R. Livingston	200883
	Gloria W. Livingston	200372
	Harvey H. Friedman	200371
	Arlene Whitaker James	200365
	Phyllis B. Puckett	225059
	Rhalda S. Friedman	202440
	Joyce F. Grant	202441
	Barbara A. Purvis	202438
88-1756	*Albert Sivley	156549
88-1758	*Louise Anderson	40014
	*Jan Beck	40021
	*Mary Jo Bennett	97533

*Not a petitioner

APPEAL NUMBER	APPELLANT	DALKON SHIELD NUMBER
	*Sandra Bescheinen	314579
	*Patricia Bonn	40029
	*Diane Brosco	40038
	*Karla Clark	866239
	*Catherine Crawford	40065
	*Silvia Crockett	40066
	*Dee Dahl	269915
	*Katheryn Duryea	192464
	*Mickie Engel	179358
	*Mary Fischer	40095
	*Arlene Ford (Robinson)	100767
	*Sandra Fritz	33463
	*Susan Geisler	236132
	*Nancy Gossan	275731
	*Constance Halverson	64890
	*Lois Hansel	15085
	*Rachel Jones	183223
	*Lisa Kerr	66317
	*Rosemary Lambert	174880
	*Nora Manning	40169
	*Carolie Martin	40172
	*Lee McDaniel	40183
	*Eleanor Meyer	236151
	*Rosemary Nelson	66584
	*Charlotte Pool	66605
	*Faye Schultz	14448
	*Sharon Scott	269922
	*Ginger Shirley	66666
	*Yvonne Spicer	67003
	*Lyndalou Steckler	66566
	*Shelly Stisser	66682
	*Carole Torres	66478
	*Suzanne Walfoort	304062
	*Mary Ann Watrous	
	*Diane Zapata	153920
88-1759	Lynn Scott Carol Lopez	

*Not a petitioner

APPEAL NUMBER	APPELLANT	DALKON SHIELD NUMBER
88-1760	Elaine Cumley	207022
	Jean Abad	268523
	Eileen Ackerman	82175
	Linda Adamecz	232928
	Donna Albright	268416
	Christine Alfaros	82173
	Cathy Allen	82172
	Paulette Allen	269145
	Scott Allen	268521
	Nancy Alotis	269161
	Diane Anderson	268414
	Susan Anderson	82171
	Douglas Anderson	268519
	Anne Angelou	82170
	Dimitris Angelou	268516
	Cynthia Apple	275727
	Ann Frances Aspon	82243
	Beverly Annette Back	203008
	Deborah Barbour Eaton	82235
	Beret Barnes	82169
	Dixie Barnes	203011
	Beverly Bartley-Mustin	82168
	Jane Beedle	82167
	Kathy Bennett	275752
	Edith (Deedi) Berde	275753
	Janice Berg	268481
	Hanna Berkow	87077
	Birohnie Blair Dowdell	202946
	Sandra Bliven Budd	82166
	Jennell Boote	82165
	Stessi Boyd	275736
	Jean Brewer	82164
	Geraldine Broeffle	82163
	Carolyn Brown	107919
	Marguerite Bryson	203023
	Sandra Bucsit	268413
	Veronica Burns-Peterson	82162
	Norma Cabrera Reid	82161
	Sylvia Cameron	82153

APPEAL NUMBER	APPELLANT	DALKON SHIELD NUMBER
88-1760 (continued)	Chris Campbell	203020
	Cynthia Campbell	269162
	Linda Carlsen	203010
	Jennifer Cheney	268475
	Judy Clark	82154
	Karen Clement	268518
	Karl Clement	268509
	Myra Cole	82155
	Kathy Collin	32966
	Arthur Collin	268503
	Patricia Conley	82156
	Bonnie Cook	203019
	Sheryl Cooper	202980
	Dawn Covell	82210
	Dianna Crabb	82143
	Karen Crenshaw George	82144
	Michael Crenshaw	268506
	Linda Groskey	82146
	Kenneth Croskey, Sr.	268501
	Judith Danforth	269148
	Adis Daniels	271762
	Monica Davis	233127
	Becky Deeter	202989
	Maureen DeGaetano	91499
	Diane DeRooy	82148
	Christina DeWeese	82236
	Mary Ann Dizon Lancaster	203018
	Catherine D. Tomlinson	202979
	Janet Dowling	82149
	Larry Dowty	
	Lorraine Dressel	203017
	Susan Duram	268471
	Susan Jane Durham	82139
	Leolynn DuVal	202982
	Christine Eager Leback	82140
	Cathi Eicher	203033
	Charlene Eitelberg	275737
	Monica Ellis	82141
	James Ellis	268498

APPEAL NUMBER	APPELLANT	DALKON SHIELD NUMBER
88-1760 (continued)	Danelia Fanello	82135
	Phyllis Fernandes	203039
	Edward Fernandes	268496
	Gloria Fields	120488
	Margaret Fithen	203012
	Cleo Fitzgerald	82132
	Gregory Fitzgerald	268494
	Marcia Fletcher	35024
	Julia Foss	268410
	Judith Fowe	82134
	Robert Fowe	268446
	Patricia Fox	268513
	Ronald Fox	268530
	Juanita Francis	82237
	Don Francis	268492
	Jackie Franck	229230
	Delilia Frank	82136
	Marie Gallegos	82137
	Pamela Garrett	268511
	Mary Jane Gassert	82138
	Rhonda Gateman Herman	268510
	Linda Gause	82121
	Kathryn Gillette	202985
	Catherine Gitchell	82123
	Louis Gitchell, Jr.	268491
	Christine Gitchell	200563
	Cathy Reiner Godwin	82122
	Cliff Godwin	268488
	Pamela Goldader	269147
	Judith Grafing	82124
	Richard Grafing	268487
	Alice Grimes	82125
	Mary Grubb	268463
	Tamara Guslander	82126
	Charles Guslander	268483
	Carol Hawkins	268461
	Ruby Haywood	82127
	Christen Hearn	82128
	Melvin Hearn	268482

APPEAL NUMBER	APPELLANT	DALKON SHIELD NUMBER
	Eloise Hebert	268508
	Christine Henshaw	82129
	Gail Hertzler Buehler	203022
	George Buehler	268515
	Pam Heselgrave	199804
	Karin Hoffman	276494
	Gayle Holm	202995
	Joanne Huffman	268507
	David Huffman	268480
	David Huffman	200543
	Lori Inglis	151878
	Rose Anne Jacobs	4556
	Rhonda Jared	82130
	Cathy Jensen	82238
	Pam Jensen	82204
	Christy Johnson	82198
	Deborah Johnson	69841
	Dale Johnson	214683
	Karren Johnson	82199
	Linn Johnson	268478
	Elaine Jones Donovan	82200
	Helen Jones	203043
	L. C. Jones	268476
	Patricia Jordshaugen	203042
	Lucinda Karlic	82201
	Stefan Karlic	268470
	Donna Kirby	82188
	Clyde Kirby 268468	
	Janice Knudsen	82208
	Ruth Korkowski	82186
	Shirlee Krumplemann	269164
	Maria Krzeszowski	203000
	Mieczyslaw Krzeszowski	275715
	Sandy Lasicka	82202
	Bonnie L. Wasserman	82203
	Janet LaWall	82195
	Winnie Sue Lee	82196
	Linda LeFebvre	202998
	Carmen Leuschner	268504

APPEAL NUMBER	APPELLANT	DALKON SHIELD NUMBER
88-1760 (continued)	Robert Leuschner	268466
	Molly Linderoth	82197
	Charlene Linvog	268505
	Dixie Llewellin	82190
	Dave Llewellin	268464
	Janna Gingras (fka London)	82191
	Linda Look	82192
	Sharron Loveall	228981
	Shannon Lowe	130082
	Kathy Lumsden	203041
	Nancy Lyon	82193
	Linda Magnuson	82118
	Carol Mahony	202994
	Cindy Mahugh	268457
	Barbara Maine	82119
	Margaret Mamon	82120
	Tony Mamon	268442
	Karen Manning	82108
	Debra Marcus	104289
	Kathy Mare	82110
	Margaret Maredza	82111
	Diane Strayer (fka Martin)	82112
	Jane Martin	82133
	Ricbard Martin	268441
	Shirley Martinez	268417
	Nina Mason	56672
	David Mason	268436
	Laine Jill McClellan	268412
	Sue McCracken	126795
	Veronica McCreary-Oliver	82113
	Kenneth Oliver	268462
	Constance McDowell	268502
	Petra (Peggy) McIntyre	203024
	Karen Meola	202999
	David Meuli	
	Jodi Miasnik	82116
	Stephanie Lieb Migdal	82117
	Gerald Migdal	268529
	Gwendolyn Miller Juleff	82184

APPEAL NUMBER	APPELLANT	DALKON SHIELD NUMBER
88-1760 (continued)	Rose Miller	178415
	Beverly Mills	82183
	Marla Mobley	82160
	Shelia Mohn	82182
	Valerie Moore	275747
	Maggie Morales	96003
	Gloria Morris	269154
	Lorena Mrachek	202986
	Kathleen Munro-McNeill	82181
	Richard Munro-McNeill	268528
	Debra Nelson	82180
	Victoria Nomikos Blair	82179
	Hazel Norbury	203163
	Jackie O'Ryan	82189
	Johnnie Clay Paradiso	203015
	Margaret Parent	116882
	Sarah Parrington	82178
	Rosalie Passarelli	82177
	Carmella Patterson	82176
	Samuel Patterson	268432
	Sue Peet	215683
	Christina Peterson	275765
	Christine Peterson	82239
	Walter Peterson	268430
	Shirley Peterson	145090
	Barbara Phair	269160
	Heidi Pierotti	82240
	Alberta Plate Franco	82242
	Pat Premel	268497
	Steve Premel	268429
	Susan Pupera	82231
	Deloris Ragazzo	202990
	Victoria Raider Romero	275760
	DiAnne Rainard	82233
	Marty Reeh	97855
	Deborah Rennick	268142
	Debra Porter Rettman	203027
	Peter Rettman	275758

APPEAL NUMBER	APPELLANT	DALKON SHIELD NUMBER
88-1760 (continued)	Eula Rials	82159
	Margaret Richards	88274
	June Richey	203028
	Lloyd Richey	275716
	Deja Robins	82234
	Valorie Robinson Jensen	82223
	Sandra Roose	19657
	Angela Rose	268493
	Crystal Rose	203003
	Sharon Rossmeier	82224
	Demetra Rouvas	82225
	Julie Ryan	82226
	Connie Samp	82158
	Donna Sanders	268490
	David Sanders	268426
	Susan Sasnett	82227
	Jay Sasnett	268424
	Deborah Brown Saxton	268448
	Lisa Schanz	82228
	Allahna Schriver	82229
	Sharon Seal	82157
	Dianne Seibold	82230
	Horst Seibold	268422
	Teresa Selfe	82217
	Eilene Sharp	82151
	Kathleen Shelby	82219
	Ruby Shumate	82220
	Donnell Shumate	268420
	Shirley Shumway	43185
	Michael Shumway	268525
	Sally Siddiqi	82221
	Donna Siler	82222
	Marilyn Skone	203014
	Wanda Slater	268489
	Jacqueline Smith	82216
	Donald Smith	268418
	Kathleen Smith	268486
	Robert Smitb	268474

APPEAL NUMBER	APPELLANT	DALKON SHIELD NUMBER
88-1760 (continued)	Judith Smith	82215
	Tim Smith	268415
	Deborah Snyders	82152
	Anke Spencer	268485
	Don Spencer	268437
	Colleen Still	227825
	Deborah Stoffel	82214
	Jackie Stone	141320
	Savana Swain	202997
	Clifford Swain	268435
	Renee Swanson	82194
	Carol Sycks	82213
	Robert Sycks	268434
	Kathy Syrdal	82212
	Phil Syrdal	268431
	Ann Tabasinske	89787
	Gary Tabasinske	7170
	Kay Tamura	82211
	Steven Tamura	268428
	Margaret Taplin	268445
	Deborah Tegelberg	202984
	Claudeen Tobiason	82205
	Jodi Tranter	203025
	Frank Tranter	268427
	Erma Turner	32831
	Kathryn Ulrich	268409
	Vicik Urias	82206
	Magic VanAusdal	268408
	Vicki Volkersz	82254
	Marilyn Waara	275726
	Elizabeth Walton Kilner	82253
	Teresa Ward	236256
	Kathleen Warren	82251
	Donald Warren	268524
	April Weber	82252
	Chriss Webster	21897
	Karolyn Webster	268443
	Gloria White	82250

APPEAL NUMBER	APPELLANT	DALKON SHIELD NUMBER
	Donald White	268425
	Lynda Williams	82187
	Linda Lee Wilson Cas law	82249
	Susan Wilson	203030
	Janet Lee Winston	203013
	Mary Winters	268484
	Hazel-Jean Wolbert	202996
	Dyanna Wolcott	82247
	William Wolcott	268423
	Ardyth Wuori	82248
	Penny Wykes	82246
	Sherry York	82245
	Gary York	268421
	Carolyn Young	31271
	Diane Young	275763
	Linda Young	82244
	Joyce Zaborowski	82241
	Sgt. Daniel Zaborowski	268419
	Greg Ross	268526
88-1763	Alexia Anderson	225182
	Barbara Anderson	231938
	Philip Anderson	268170
	Paula C. Bannow	11228
	John Bannow	271718
	Diana R. Beard	10440
	Robert Davis Beard	271192
	Sherry Bergman	15385
	Charles Bergman	271992
	Marsha Brown	71237
	Jeannette Bulinski	15584
	Gregg Gundersen	272541
	Wendy R. Busch	10864
	Lillian Castillo	122920
	Elizabeth Chamberlayne	48517
	Carol Cooke	10446
	Donna Cornelisse	15383
	Denise Crowell	10865
	Mike Crowell	271721

APPEAL NUMBER	APPELLANT	DALKON SHIELD NUMBER
88-1763 (continued)	Jacki Dasso	10454
	John Thompson	271720
	Sharon Ebert	223890
	Dennis Ebert	271532
	*Laura B. Emerson	16301
	Gary S. Emerson	263135
	Carol Evans	11339
	Dennis S. Evans	271538
	Melinda F. Evans	10448
	Hawley Roger Evans	272532
	Carla Magdanz Everett	15585
	Barbara Ferguson	10862
	Charles Ferguson	262197
	Nancy C. Franz	15382
	Roger A. Franz	258077
	Julia Bloch Frey	163423
	Janette S. Gamet McMahon	11344
	George McMahon	272764
	Mary C. Graham	15386
	Ronald Graham	274584
	Xenia Graves	11341
	Cheryl A. Gruse	11334
	Roberta Guildner	10501
	Ava Hamilton	11343
	Delmar Hamilton	262660
	Delores M. Haro	228508
	Lori Haugland	206197
	Mary R. Hein	16655
	William Hein	272766
	Janet Heitzmann	10449
	Mary Frances Hilko	243918
	Lucy Judson	10444
	Craig Alan Yeager	272765
	Betty Kenzel	10443
	Richard E. Kenzel	263118
	Judy Kurtz	10452
	Judith Lavezzi	6088
	Susanne Leutbauser	11337
	Truman Leuthauser	262311

*Not a petitioner

APPEAL NUMBER	APPELLANT	DALKON SHIELD NUMBER
	Harriet Elizabeth Mann	223977
	Sharon L. Mazotti	223979
	Daniel Mazotti	268168
	Sandra R. Merrill	10451
	Roy R. Merrill	262312
	Laurel Ruth Mifflin	255908
	John Mifflin	273601
	Nathan Mifflin	254594
	Sandra D. Miller	11342
	John K. Miller	268162
	Peggy Morgan	11336
	Barbara R. Now[illegible]	10445
	Mary Ann Perkins	10447
	Russell Perkins	263117
	Ravonda L. Potter	10450
	Roger Jay Potter	271533
	Kathy Quinton	16300
	Judith Anne Ramsay	10442
	Charles E. Ramsay	271723
	Pamela S. Reiter	11340
	Peter Reiter	274587
	Ella Ruth Rogers	9295
	Elaine Rogers	16298
	Donis Rogers	265558
	Christine Seiffert	171920
	Stefanie Selden	9271
	Judy Sheppard	25992
	M. Lee Sheppard	268166
	Jessica A. Simkulet	11335
	Janet Singletary	16654
	Roger Singletary	268167
	Evelyn M. Snyder	16302
	Andrew Snyder	15387
	Marcia Steel	16303
	Mary Stewart	15387
	Charles D. Stewart	265520
	Karon Tiger	234904
	Thelma L. Tilman	236252
	Durcille Trolinger	206281

APPEAL NUMBER	APPELLANT	DALKON SHIELD NUMBER
88-1763 (continued)	Jo Susan Verspohl	13063
	Ronald Verspohl	272554
	Carol J. Waltz	16299
	Ronald F. Waltz	268165
	Kathleen A. Watson	199542
	Larry Watson	291814
	Abby Weinstein	166871
	Barry Weinstein	258076
	Diane West	10408
	Martha Whitehead	199551
	Marlyin Wilson	25436
	Vicki Woodard	10441
	Tom George	171536
	Deirdre J. Zietz	15384
	Leonard E. Zietz	260920
	Rebecca L. Adair	239633
	Gary A. Adair	239634
	Sharon C. Angel	145182
	Gene R. Angel	304529
	Katharine K. Beattie	106539
	Fareda E. Belcher	239629
	Floyd Belcher	106540
	Linda M. Black	239635
	William R. Black	239636
	Mary A. Bonner	37245
	Robert I. Bonner	239637
	Johnsie C. Brown	117778
	Joseph T. Brown, Jr.	326617
	Vicki L. Brown	106541
	Randy L. Brown	106542
	Juanita L. Brown	106543
	Shirley Mae Burroughs	106550
	Robert Burroughs	106551
	Beverley Davisson	106544
	William A. Davisson	106545
	Jason W. Davisson	106546
	Debra G. Dean	12776

APPEAL NUMBER	APPELLANT	DALKON SHIELD NUMBER
88-1763 (continued)	Mary Ann Evertson	106547
	Robert W. Evertson	106548
	Sandra L. Flynn	106549
	Joyce Frieders	106569
	Charles D. Frieders	106570
	Patricia Graber	269036
	Patricia J. Heuseveldt	239639
	Ronald W. Heuseveldt	239640
	Heather Hull	106571
	Kenneth L. Hull	106572
	Patty E. Hutton	106553
	Leon D. Hutton	106554
	Amy Marie Hutton	106552
	Charlotte S. James	269035
	Kay M. Kincade	243662
	Paul W. Kincade	243663
	Bonlyn G. Qulick	251829
	Anna Louise Luhman	106555
	Kersten Males	106575
	William Males	106576
	Roberta C. Martin	106573
	Keith A. Martin	106574
	Sarah E. McLeod Kirk	106556
	David C. McInnis	106557
	Billie Rae Mercer	106558
	Sandra J. Mertens	106559
	Ronald G. Mertens	106560
	Kay Diane Milligan	6205
	William D. Milligan	6206
	Betsy A. Munson	106577
	Judith A. Nichols	106561
	James R. Nicbols	106562
	Kathleen K. Pope	106578
	Rita M. Raaf	106579
	Richard D. Raaf	106580
	Courtney L. Raaf	106581
	Elizabeth W. Rinehart	239641
	Richard R. Rinehart	239642
	Gaylene P. Schommer	106563

APPEAL NUMBER APPELLANT	DALKON SHIELD NUMBER
John W. Schommer	106564
Rachel H. Scott	106565
David L. Scott	106566
Janet L. Scott	106582
Janice A. Sell	239643
Steven K. Sell	239644
Fay Annetta Smith	106583
Rhonda J. Smith	212510
Peggy A. Sneegas	239645
Roger A. Sneegas	239646
Rebecca J. Stafford	297307
Sonja G. Sweek	106584
Nancy J. Taylor	106567
Mary Ann Thomas	106585
Steven J. Thomas	106586
Elizabeth E. Tomaszewicz	239648
George R. Tomaszewicz	239649
Patricia Ann Tronsgard	106568
Catherine L. Wood	239630
Joda D. Wrigbt	239631

Appellants in Appeal No . 88-3602 are identical to those in NO. 88-1763 and their names are, therefore, not repeated.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re A. H. ROBINS COMPANY, INCORPORATED, Debtor.	)	Chapter 11 Case No. 85-01307-R Judge Merhige (Retained Proceeding)

ORDER CONFIRMING DEBTOR'S SIXTH AMENDED AND RESTATED PLAN OF REORGANIZATION*

The Debtor's Sixth Amended and Restated Plan of Reorganization (the "Plan") having been filed with this Court on March 28, 1988, by A. H. Robins Company, Incorporated, debtor and debtor-in-possession ("Robins" or the "Debtor"); and copies of the Debtor's March 28, 1988 Sixth Amended and Restated Disclosure Statement Pursuant To Section 1125 of the Bankruptcy Code (the "Disclosure Statement") (including the plan as an exhibit thereto) having been transmitted to all Dalkon Shield claimants, creditors and equity security holders as provided in the Court's April 1, 1988 (nunc pro tunc) "Order Approving Sixth Amended and Restated Disclosure Statement Pursuant To Section 1125 of the Bankruptcy Code and Giving Notice of the Confirmation Hearing on Robins' Plan of Reorganization" and the Court's April 18, 1988 "Order Under Bankruptcy Rule 3018 Authorizing Class Representatives To Accept Or Reject plan On Behalf Of Class Action Plaintiffs" (the "Ross Order"); and Robins having filed, and, served an "Objection and Notice of Hearing on Objection of A. H. Robins Company, Incorporated, Debtor and Debtor in-Possession, Under 11 U.S.C. 502(a) and Bankruptcy Rules 3003(c)(2) and 3007 to Certain Untimely Dalkon Shield Claims"

(the "Late Claim Objection"), seeking an order disallowing certain untimely filed Class 3A Dalkon Shield Claims and providing that holders of such Claims are barred from voting such Claims on the Plan; and Robins having filed and served an "Objection and Notice of Hearing on Objection of A. H. Robins Company, Incorporated, Debtor and Debtor-in-Possession, Under 11 U.S.C. § 502(a) and Bankruptcy Rule 3007 To Dalkon Shield Claims" (the "Punitive Damage and General Objection"), seeking an order providing that any portion of any Dalkon Shield Claim that is or may be for punitive or similar damages is disallowed and that no Dalkon Shield Claim is allowed except and to the extent provided for in the Plan and the Voting Order; and copies of the "Notice of the Date On Or Before Which Each Person Retained Or That May Request Compensation And/Or Reimbursement Of Expenses In This Case Pursuant To Section 327, 328, 330, 503(b) or 1103 Of The Bankruptcy Code Must File A Binding Estimate Of The Maximum Amount Of Allowance Of Compensation And Reimbursement Of Expenses To Be Requested In This Case" (the "Fee Cap Notice") having been transmitted to various persons retained, or that might seek compensation or reimbursement of expenses from the Debtor's estate pursuant to Section 327, 328, 330, 503(b) or 1103 of the Code (the "Noticed Professionals") pursuant to the Court's June 13, 1988 "Order Establishing and Approving Form and Method of Notice Of The Date On Or Before Which Each Person Retained Or That May Request Compensation And/Or Reimbursement Of Expenses In This Case Pursuant To Section 327, 328, 330, 503(b) or 1103 Of The Bankruptcy Code Must File A Binding Estimate Of The Maximum Amount Of Allowance Of Compensation And Reimbursement Of Expenses To Be Requested In This Case" (the "Fee Cap Order"); and Robins having proposed modifications to the Claimants Trust, the Claims Resolution Facility and Sections 4.03, 5.01 and 6.07 of the

Plan so as to permit (a) the creation of the Claimants Trust before the Consummation Date so that the $100 million "start-up" payment contemplated by Section 6.07 of the Plan can be made and administered and (b) other technical corrections; and a hearing on confirmation of the Plan, the Late Claim Objection, the Punitive Damage and General Objection, and objections to confirmation of the Plan having been commenced on July 18, 1988, after due and appropriate notice; and upon all of the evidence adduced at, memoranda filed in connection with, and arguments of counsel made at the Confirmation Hearing and at the hearing commenced on November 5, 1987, to consider Robins' June 5, 1987 motion for an order, *inter alia*, directing group estimation of Dalkon Shield Claims for purposes of plan voting, allowance and distribution; and upon the record compiled in this Case; and after due deliberation; and upon the decision and findings of this Court issued on July 25, 1988; the Court hereby finds and determines that:

1. The Plan has been accepted in writing by the creditors and equity security holders whose acceptance is required by law in accordance with the special voting procedures approved by this Court's Ross Order and Voting Order.

2. The provisions of Chapter 11 of the Code have been complied with.

3. The Plan has been proposed in good faith and not by any means forbidden by law.

4. Any payment made or to be made by the Debtor, or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in or in connection with the Case, or in connection with the Plan and incident to the Case, have been approved by, or are subject to the approval of, the Court as reasonable.

5. The identity, qualifications, and affiliations of the persons who are to be directors or officers, or voting trustees, if any, of Robins or of the Successor Corporation after confirmation of the Plan, to the extent known, have been fully disclosed, and the appointment of such persons to such offices, or their continuance therein, is consistent with the interests of Robins' creditors and equity security holders and with public policy.

6. The identity of any insider that will be employed or retained by the Debtor or the Successor Corporation and his compensation have been fully disclosed, to the extent known.

7. No governmental regulatory commission has jurisdiction over rates charged by Robins.

8. Each holder of a claim or interest has accepted the Plan or will receive or retain under the Plan property of a value, as of the effective date, that is not less than the amount that such holder would receive or retain if Robins were liquidated under Chapter 7 of the Code on such date. Section 1111(b)(2) of the Code does not apply to the Claims of any Class, and no election pursuant to that section has been made in this Case.

9. Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of Robins or the Successor Corporation.

10. Any Person now or hereafter asserting any right to payment against Robins based upon or in any manner arising from any Dalkon Shield, including, without limitation, any Dalkon Shield Claim, held a dischargeable Claim against Robins at the commencement of the Case if the Dalkon Shield to which such asserted Claim relates was inserted before the commencement of the Case.

11. The payments into the Trusts provided for under Sec-

tions 5.01(b), 5.02(b) and 6.07 of the Plan are sufficient to pay all Allowed Dalkon Shield Personal Injury Claims, Allowed Dalkon Shield Liquidated Claims and costs and expenses of the Trusts in full.

12. The Plan and the transactions contemplated by it do not provide for and, when consummated, will not constitute the liquidation of all or substantially all of the property of the Debtor's estate.

13. The transfers of property by Robins to the Successor Corporation (i) are or will be legal, valid and effective transfers of property; (ii) vest or will vest the Successor Corporation with good title to such property free and clear of all liens, charges, claims, encumbrances, or interests, except as expressly provided in the Plan; (iii) do not and will not constitute fraudulent transfers or conveyances under the Code or under the laws of the United States, any State, territory, possession or the District of Columbia; and (iv) do not and will not subject the Successor Corporation or its Affiliates to any liability by reason of such transfer under the laws of the United States, any State, territory or possession thereof or the District of Columbia based, in whole or in part, directly or indirectly, on any theory of law, including, without limitation, any theory of successor or transferee liability.

14. The releases and injunction provided in Sections 8.03 and 8.04 of the plan are an integral part of the compromises and settlements incorporated in the Plan.

15. The Robins Family Contribution is valuable consideration for the releases contained in Section 8.04 of the Plan, the injunction provided in Section 8.04 of the Plan, other terms and conditions of the Plan, and the benefits of the Other Claimants Trust.

16. The modifications to the Plan and related documents described in Exhibit B hereto are technical changes required to correct typographical errors or so that the $100 million start-up payment and distributions contemplated by Section 6.07 of the Plan and described in the Disclosure Statement can be made and implemented. As such, those modifications do not require resolicitation of acceptances or rejections, nor do they require that holders of Claims or interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

17. On June 13, 1988, this Court entered the Fee Cap Order capping the aggregate amount of Fee Claims of Noticed Professionals at the amounts set forth in the binding estimates filed by them on or before July 13, 1988, in accordance with the Fee Cap Order.

18. The aggregate liability of Robins to Rorer Group Inc., Rorer Merger Corp., their affiliates or agents, arising under or related to the Agreement and Plan of Merger among Rorer Group Inc., Rorer Merger Corp. and Robins (including, without limitation, any liability for a termination fee or any breach of such agreement), does not exceed a termination fee of $25 million, plus those out-of-pocket expenses of Rorer Group Inc. specified in Section 9.2(d) of such agreement as may be approved by the Court.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED, THAT:

19. The Plan, a copy of which is attached hereto as Exhibit A, as modified by this Order and the modifications set forth in Exhibit B hereto, is hereby confirmed, and all acceptances and rejections previously cast for or against the Plan are hereby deemed to constitute acceptances or rejections of the Plan as modified by this Order and Exhibit B.

20. Paragraphs 4.03 and 5.01 of the Plan, the Claimants Trust, and Section B of the Claims Resolution Facility shall be and hereby are deemed to be modified as set forth in Exhibit B hereto.

21. Each of the objections to the Plan and all reservations of rights included therein are overruled.

22. The Initial Trustees of the Other Claimants Trust shall be Georgine M. Vairo, John M. Dowd, and Edward G. Modell.

23. Robins is hereby authorized, empowered, and ordered to execute and receive, the Claimants Trust Agreement and the Other Claimants Trust Agreement, thereby establishing the Claimants Trust and the Other Claimants Trust for the principal purpose of resolving and satisfying Dalkon Shield Claims and Dalkon Shield Liquidated Claims.

24. Robins is hereby authorized, empowered and ordered to make or cause to be made transfers to the Trusts pursuant to Sections 5.01, 5.02, and 6.07 of the Plan, and the Trusts, upon their establishment, are hereby authorized, empowered and ordered to receive all property which is or is to be transferred to them by Robins, Aetna or others in accordance with Sections 5.01, 5.02, 6.06, 6.07 and 6.08 of the Plan.

25. Robins is hereby authorized, empowered and ordered to issue, execute, deliver, file, and record any documents or court papers or pleadings, and to take any and all actions, that are necessary or desirable to implement, effectuate and consummate the transactions contemplated by the Plan, the Claimants Trust, the Other Claimants Trust, the Merger Agreement and the Claims Resolution Facility, or any of them, whether or not specifically referred to in the Plan (or related documents) and without further application to or order of this Court.

26. Consistent with the Plan (and in particular Article VI thereof, entitled "Means for Implementation of Plan"), the following agreements and documents which are attached as exhibits to the Plan, including all annexes thereto and all terms and provisions thereof, are hereby approved:

(a) The Claimants Trust Agreement;

(b) The Other Claimants Trust Agreement; and

(c) The Claims Resolution Facility.

27. The Claimants Trust is hereby authorized and ordered to implement the provisions of the Claims Resolution Facility, including without limitation the mailing of instructions, forms, and notices and the disallowance of claims as specified in Section B of the Claims Resolution Facility.

28. The Dalkon Shield Claim of any Personal Injury Claimant who failed to file with the Court a timely and proper written notice of Claim is a Disallowed Claim unless it is reinstated in accordance with the Claims Resolution Facility.

29. Effective on the Confirmation Date, Robins is discharged from any Claim and any "debt" (as that term is defined in Section 101(11) of the Code), and, as a result of entry of this Order, Section 1141(d) of the Code, and Section 8.01 of the Plan, Robins' liability in respect thereof is extinguished completely, whether reduced to judgment or not, liquidated or unliquidated, contingent or noncontingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, legal or equitable, known or unknown, that arose from any agreement of Robins entered into or obligation of Robins incurred before the Confirmation Date, or from any conduct of Robins prior to the Confirmation Date, or that otherwise arose before the Confirmation Date, including, without limitation, all interest, if any, on any such debts, whether such

interest accrued before or after the date of commencement of the Case, and including, without limitation, all debts based upon or arising out of Dalkon Shield Personal Injury Claims, Dalkon Shield Other Claims or Dalkon Shield Liquidated Claims, and from any liability of a kind specified in Sections 502(g), 502(h) and 502(i) of the Code, whether or not a proof of claim is filed or deemed filed under Section 501 of the Code, such Claim is allowed under Section 502 of the Code, or the holder of such Claim has accepted the Plan.

30. Robins' liability for all such Claims and debts described above, and for the costs and expenses of the Trusts, is limited to the amounts that it is paying or causing to he paid pursuant to the Plan. Robins' liability for all Dalkon Shield Claims and Dalkon Shield Liquidated Claims shall be limited and channelled to the Trusts, which shall be the sole source of payment of such Claims.

31. Any portion of any Dalkon Shield Claim that is or may be a Claim for punitive or similar damages is a Disallowed Claim; provided, however, that holders of Dalkon Shield Claims subject to the Claims Resolution Facility are entitled to receive from the Claimants Trust any sums payable in lieu of punitive damages pursuant to the Claims Resolution Facility.

32. No Dalkon Shield Claim shall be allowed except and to the extent provided for in the Plan and the Voting Order, and Robins' objection to Dalkon Shield Claims set forth in paragraph 7 of the Punitive Damage and General Objection shall be resolved by and under the Claims Resolution Facility.

33. The releases referred to and described in Section 8.03 of the Plan are effective as provided in Article VIII of the Plan, and Robins is hereby authorized and empowered to execute and deliver all documents necessary to effectuate such releases. Upon the entry of this Order, and except as other-

wise expressly provided in the Plan, (a) all Persons (i) who have held, hold or may hold Claims, including, without limitation, Dalkon Shield Claims or Dalkon Shield Liquidated Claims or (ii) who have held, hold or may hold Robins Common Stock, and (b) the Debtor, the Successor Corporation and their Affiliates, in consideration for the promises and obligations of the Debtor and the Successor Corporation under the Plan, including the establishment and funding of the Trusts, are hereby deemed to have forever waived, released and discharged all rights or claims, whether based upon tort, fraud, contract or otherwise, which they heretofore, now or hereafter possess or may possess against any Person (excluding only Unreleased Claims) based upon or in any manner arising from or related to (w) the Dalkon Shield, (x) the research and development, manufacture, distribution, sale, provision, recommendation, insertion, use or removal of a Dalkon Shield, (y) the processing, adjustment, settlement, payment, defense, negotiation or handling of any claims, demands, suits, causes of action or proceedings, based upon or relating in any way to the Dalkon Shield, or (z) the failure to warn, disclose or provide information concerning, or to take remedial action with respect to, the Dalkon Shield, including, without limitation, (a) those for indemnity, whether contractual or otherwise, contribution, subrogation and reimbursement with respect to any claim, demand, proceeding, suit or cause of action that has been, is, or may be asserted against any person based upon or in any manner arising from or relating to any of the matters enumerated or described in (w), (x), (y) and/or (z) above, (b) those for death or personal injuries, including emotional distress, (c) those for damages, including punitive damages, (d) those for attorneys' fees and other expenses, fees or costs, (e) those for any possible economic loss or loss of consortium, (f) those for damages to reputation, and (g) those for any equitable remedy, all such rights and claims being hereinafter referred to as "Dalkon Shield-Related Claims."

34. The injunction referred to and described in Section 8.04 of the Plan is effective as provided in Article VIII of the Plan. Upon the entry of this Order, and except as otherwise expressly provided in the Plan, (a) all Persons (i) who have held, hold or may hold Claims, including, without limitation, Dalkon Shield Claims or Dalkon Shield Liquidated Claims, or (ii) who have held, hold or may hold Robins Common Stock, and (b) the Debtor, the Successor Corporation and any of their Affiliates, are hereby permanently enjoined on and after the Confirmation Date (A) from commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim or any Dalkon Shield-Related Claim against the Debtor, its shareholders, the Successor Corporation, any of the Affiliates thereof (including, without limitation, AHP), the Trusts or any other Person or the property of the Debtor, the Successor Corporation, any of the Affiliates thereof, or of any other Person, (B) from the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order against the Debtor, its shareholders, the Successor Corporation, any of the Affiliates thereof (including, without limitation, AHP), or any other person or the property of the Debtor, the Successor Corporation, any of the Affiliates thereof (including, without limitation, AHP), or any other Person with respect to any such Claim or any Dalkon Shield-Related Claim, (C) from creating, perfecting or enforcing any encumbrance of any kind against the Debtor, its shareholders, the Successor Corporation, any of the Affiliates thereof (including, without limitation, AHP), or any other Person or against the property of the Debtor, its shareholders, the Successor Corporation, any of the Affiliates thereof, or any other Person with respect to any such Claim or any Dalkon Shield-Related Claim, (D) from asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due the Debtor, its shareholders, the

Successor Corporation, any of the Affiliates thereof (including, without limitation, AHP), or any other Person or against the property of the Debtor, its shareholders, the Successor Corporation, any of the Affiliates thereof (including, without limitation, AHP), or any other Person with respect to any such Claim or any Dalkon Shield-Related Claim, and (E) from any act, in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan, the Claims Resolution Facility and the Trust Agreements; provided, however, that such injunction shall not impair the rights of persons with Dalkon Shield Claims or Dalkon Shield Liquidated Claims from asserting Unreleased Claims. After properly electing trial by jury under Option 3 of the Dalkon Shield Claimants Trust Claims Resolution Facility, a Person shall, notwithstanding this injunction, be entitled to continue or commence a jury trial against the Claimants Trust for the purpose only of obtaining a judgment for compensatory damages against the Trust liquidating that Person's Dalkon Shield Claim so that it may be paid with other Allowed Dalkon Shield Personal Injury Claims in the ordinary course of the Trust's operations consistent with the provisions of the Claims Resolution Facility and such other procedures as the Trustees may establish pursuant to the Claims Resolution Facility. The holder of any such judgment is hereby permanently enjoined from executing against either of the Trusts or their assets.

35. The provisions of this Order are non-severable and mutually dependent.

36. The assumption by the Debtor of all executory contracts (including, without limitation, product, patent, trademark, and know-how licenses) and unexpired leases which it has sought to assume under Section 9.02 of the Plan is approved in all respects; provided, however, that the Court shall retain jurisdiction to determine any dispute as to the amount of

defaults, if any, required to be cured under Section 365(b)(1) of the Code with respect to any such executory contract or unexpired lease.

37. Upon consummation of the Merger, all executory contracts (including, without limitation, product, patent, trademark, and know-how licenses) and unexpired leases assumed by Robins pursuant to an order of this Court during the Case or under Section 9.02 of the Plan shall be assigned and transferred to, and remain in full force and effect for the benefit of, the Successor Corporation notwithstanding any provision in such contracts or leases (including those described in Section 365(b)(2) and (f) of the Code) that prohibits such assignment or transfer or that enables or requires termination of such contracts or leases based on the Merger.

38. The adversary proceeding no. 87-1005-R, styled "Dalkon Shield Claimants' Committee, in its own right and on behalf of A. H. Robins Company, Inc., v. E. Claiborne Robins, E. Claiborne Robins, Jr. William L. Zimmer III, and McGladrey, Hendrickson & Pullen," is dismissed with prejudice, and the defendants named therein shall be discharged and released from all liability to Robins for all matters which were alleged or which could have been alleged in such complaint, upon payment of the Robins Family Contribution (with each side to bear its own costs).

39. The contested matter in the Case, filed August 3, 1987, regarding the helicopter owned by Robins shall be dismissed with prejudice upon payment of the Robins Family Contribution (with each side to bear its own costs), and, at such time, the clerk shall and is hereby directed to pay the sum deposited by E. Claiborne Robins Jr. into the Registry of the District Court in connection with such contested matter, together with any earnings thereon, to Robins, and that in exchange for such payment, E. Claiborne Robins Jr. shall be discharged and

released from all liability to Robins for those matters which were alleged or could have been alleged in said contested matter.

40. The Claims evidenced by the proofs of claim filed by or on behalf of present and former officers and directors of Robins for indemnification and contribution with respect to acts or omissions related to the Dalkon Shield are Allowed Claims assertable against the Other Claimants Trust, except that the indemnification and contribution claims of E. Claiborne Robins and E. Claiborne Robins Jr. shall become Allowed Claims assertable against the Other Claimants Trust only upon payment of the Robins Family Contribution, which Contribution shall not be refundable or repayable, directly or indirectly, by the Trusts or either of them.

41. The medical, diability, and life insurance benefits and coverage for all retired and disabled former employees of Robins, and their eligible dependents, who were entitled to receive such benefits and coverage on August 21, 1985, or who have since become entitled to receive such coverage and benefits, shall continue and be fully paid, and all defaults in the payment of such benefits shall be cured, as if this Case had never been commenced.

42. The Claims listed on Exhibit A to the Late Claim Objection and on praecipes dated April 29, 1988, June 21, 1988, July 12, 1988, and July 16, 1988, ("Late Claims") are disallowed, without prejudice to any rights of holders of those Claims created by Sections (G)(14) or (G)(15) of the Claims Resolution Facility, and holders of such Late Claims were and continue to be barred from voting Late Claims on the Plan.

43. Robins may file objections to allowance of any Claim not heretofore objected to or amendments to its schedules within 120 days from the date hereof, unless such time period is ex-

tended by order of the Court, and Robins shall pursue such objections diligently.

44. Effective on the Confirmation Date, the duties of the Creditors' Committee, the Dalkon Shield Claimants Committee, the Future Claimants' Representative, and the Equity Security Holders' Committee (collectively, the "Official Committees") will terminate, except with respect to any appeal of an order in the Case, fee applications, and any matters related to any proposed modification of the Plan. The duties of the examiner in this Case shall not cease on the Confirmation Date, but shall be subject to further instruction or order of the Court. Compensation for services rendered, and reimbursement for expenses incurred, by the examiner in this Case, the Official Committees (or any of them), or any professional person employed by Robins, the examiner in this Case or the Official Committees (or any of them) under Section 327 or 1103 of the Code shall be paid by Robins or the Successor Corporation, as the case may be, subject to approval of this Court; provided, however, that the Successor Corporation shall not be liable for any fees or expenses incurred after the later of the Consummation Date or the final disposition of any appeals or matters related to proposed modifications of the Plan.

45. This Court shall retain jurisdiction in accordance with the terms of the Plan, the other provisions of this Order, and Section 1142 of the Code.

46. Notwithstanding Section 8.09 of the Plan or any provision of the Order, Robins and the other parties to the Ross Case may, and are hereby directed to, take such steps as are necessary to obtain approval of the Class Action Settlement by the Class Action Court so that the condition to consummation of the Plan set forth in Section 7.02(d) of the plan can be fulfilled expeditiously; provided, however, that the Class

Action Settlement shall not be implemented, and the Class Action Settlement Fund shall not be released, until the Consummation Date.

Dated: Richmond, Virginia
July 25, 1988

BY THE COURT

/s/ Robert R. Merhige, Jr.
United States District Judge

WE ASK FOR THIS:
SKADDEN, ARPS, SLATE, MEAGHER & FLOM

By: /s/ Dennis J. Drebsky
(A Member of the Firm)
Attorneys for the A. H. Robins Company, Incorporated, Debtor and Debtor-in-Possession

919 Third Avenue
New York, New York 10022-9931
(212) 735-3000

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*All capitalized terms not defined herein shall have the meanings ascribed to them in the Debtor's Sixth Amended and Restated Plan of Reorganization, dated March 28, 1988.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE:	)	
A. H. ROBINS COMPANY,	)	
INCORPORATED,	)	Chapter 11
Debtor.	)	Case No. 85-01307-R
	)	(Retained Proceeding)
Employer's Tax Identification	)	(Judge Merhige)
No. 54-0486348	)	

MEMORANDUM IN RE CONFIRMATION ORDER

On August 21, 1985, A. H. Robins Company, Incorporated ("Robins") filed its petition for reorganization relief pursuant to 11 U.S.C. §§ 101 *et seq.*(the "Bankruptcy Code"). On that same day, this Court, upon representation that the major aspect of the case required the services of an Article III judge, withdrew the reference of this case to the Bankruptcy Court excepting for limited matters, thus retaining original jurisdiction in the District Court. *See Northern Pipeline Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982).

By agreement, the undersigned, with few exceptions, conducted all proceedings jointly.

During this entire case, despite objections by interested parties, Robins was, pursuant to 11 U.S.C. § § 1107 and 1108, permitted to and did manage its affairs as debtor-in-possession with monitoring by a court-appointed Examiner.

A full appreciation of the circumstances leading to the Court's instant consideration of the feasibility of the Debtor's "Sixth Amended and Restated Plan of Reorganization" in support of its motion for confirmation necessitates a condensed recitation of the events leading both to the petition of August 21, 1985 and to the matter now under consideration.

Background

In June 1970, Robins, a pharmaceutical enterprise, engaged in the research, development, manufacturing, and marketing of prescription drugs and health care products on its own behalf through subsidiaries located both in the United States and in over 100 foreign countries, purchased from the Dalkon Corporation an intrauterine birth control device marketed as a Dalkon Shield.

The very essence of Robins' business operations involves major and consistent interaction with doctors, hospitals and other health care providers. The goodwill of individuals and organizations in the profession and business of health care is a major factor in the financial viability of the Debtor.

Robins and its subsidiaries distributed almost five (5) million Dalkon Shields throughout the United States and foreign countries until June, 1974 when the product was withdrawn from the United States market, and early 1975 when foreign sales were discontinued.

By the mid-1970's, numerous lawsuits alleging injuries associated with the use of the Dalkon Shield were filed against Robins, its officers, directors, employees, as well as its insurer, Aetna Casualty and Surety Company ("Aetna") and various other co-defendants, including hospitals and physicians.

By the time of filing of the instant proceedings, Robins was faced with almost 6,000 lawsuits and claims arising from the Dalkon Shield, and had by that period of time, along with Aetna, paid approximately $530 million in settlements or in satisfying judgments arising from Dalkon Shield claims.

Additionally, in 1977, Robins and its directors and officers, including William L. Zimmer, III, E. Claiborne Robins and E. Claiborne Robins, Jr., became the subject of a class action suit

in 1977 by stockholders Kalman and Anita Ross, based on the alleged dissemination of false and misleading information, and failure to disclose other information, concerning the Dalkon Shield to purchasers of Robins' stock during the period of March 8, 1971 through June 28, 1974 (the "Ross Class Action"). The parties to the Ross Class Action agreed upon a settlement in 1984 pursuant to which Robins deposited $6.9 million with its attorneys under an escrow agreement (the "Escrowed Funds") and submitted the settlement in that amount to the Class Action Court. The Class Action Court had not ruled on the proposed settlement when Robins commenced its reorganization case on August 21, 1985.

In accord with the Ross Order, this Court authorized named plaintiffs Kalman and Anita Ross to vote as class representatives either acceptance or rejection of the plan on behalf of the Ross Class Action plaintiffs.

Under the Plan, and to resolve a controversy regarding whether the Escrowed Funds are property of the estate, the claim of the plaintiffs in the Ross Class Action is limited to the Escrowed Funds.

As the Court has indicated, Aetna had been Robins' insurer covering compensatory damages arising from the use of the Dalkon Shield prior to March, 1979.

Robins and Aetna differed as to the extent of the coverage to be afforded Robins under its policy with Aetna, and in 1979 Robins brought suit against Aetna in reference to Aetna's coverage of Dalkon Shield alleged claims (the "Coverage Litigation"). Thereafter, Robins and Aetna entered into a settlement agreement wherein it was agreed that (a) Robins receive $70 million in additional insurance coverage, (b) Aetna would continue to handle and defend Dalkon Shield cases and claims on Robins' behalf and (c) certain releases were exchanged.

Aetna has filed in these proceedings a proof of claim seeking from the Debtor reimbursement of approximately $58 million and asserting as well, rights of contribution. Robins, in turn, has contended that it has available to it insurance coverage from Aetna in excess of Aetna's proof of claim.

The Court directed its Examiner to investigate the amount of insurance coverage available to Robins, including Aetna's, and to report on the propriety of the settlement between Aetna and Robins in the Coverage Litigation. After a lengthy investigation, the Examiner, Ralph Mabey, a former Bankruptcy Judge, concluded that the settlement of the Coverage Litigation was an arms-length, good faith resolution of the issues involved, and that the amount of the settlement was reasonable as a resolution of the disputed claims.

As the Court has indicated, the consequences of Robins' Dalkon Shield venture were devastating both from a financial aspect as well as from the physical suffering alleged to have resu'ted to hundreds of thousands of claimants, some of whom have established their claimed injuries as evidenced by a number of judgments rendered against Robins amounting to millions of dollars.

The evidence before the Court is that, immediately prior to the reorganization filing, the financial drain upon Robins' assets, coupled with declining employee morale and productivity, as well as Robins' inability to borrow money at a time of a serious cash flow deficiency, led to a late determination to seek protection under the Bankruptcy Code.

Promptly following the filing for reorganization, the Court authorized and approved the appointment of a number of official committees. Each of the committees, with court approval, retained counsel as well as other experts.

The official committees, Equity Security Holders' Commit-

tee, the Unsecured Creditors' Committee, the Dalkon Shield Claimants' Committee, a Future Claimants' Representative (collectively, the "Official Committees"), the U.S. Trustee, the United States Attorney, as well as other interested parties each contributed their views, with few exceptions, on literally every issue which arose during these proceedings.

Because the distribution of the Dalkon Shield to its ultimate users was not made by Robins, hence to a great extent claimants were unknown to Robins, a method of notice of the proceedings had to be devised which would conform to the requirements of due process.

On November 21, 1985, the Court entered an order (the "Bar Date order") establishing April 30, 1986 as the deadline for filing claims against Robins (the "Bar Date"). The claim filing process required those persons wishing to assert a Dalkon Shield claim to file initially, on or before the Bar Date, only a post card containing their name, address and intention to assert a claim ("post card claims"). The Bar Date order established the form of notice to be distributed to Dalkon Shield claimants, trade creditors and stockholders and authorized Robins to undertake an international campaign for notifying all unknown claimants of the Bar Date and informing them of the procedures for filing a claim. The Bar Date order further provided that questionnaires would be sent to all persons or entities asserting Dalkon Shield claims against Robins in order to obtain necessary additional information relating to such claims.

Pursuant to the Court's order, Robins embarked on a massive international campaign for notifying all potential creditors and claimants not only of the Bar Date, but informing them of the uncomplicated method for filing a claim.

Persons who had used the Dalkon Shield but had not yet

manifested an injury were encouraged to take the necessary step to assert a claim even though not yet manifested. The Court's method of notification subsequently met with approval by the United States Court of Appeals for the Fourth Circuit. *See Vancouver Women's Health Collective Society v. A. H. Robins Co.*, 820 F.2d 1359 (4th Cir. 1987).

Pursuant to the Bar Date order, the Clerk of the Bankruptcy Court sent to each person who filed a timely post card claim a two-page questionnaire (the "Court Questionnaire") designed to elicit basic claim information from each potential Dalkon Shield claimant. The Court established June 30, 1986 as the deadline for domestic claimants, and July 30, 1986 as the deadline for foreign claimants, to return the Court Questionnaire. The District Court later extended the Questionnaire response deadline for claimants residing in Taiwan to October 6, 1986.

In excess of 175,000 Dalkon Shield claimants timely returned the Court Questionnaire.

By order entered May 5, 1987, the Court directed Robins to mail a supplemental notice and second questionnaire (the "Second Questionnaire") to each of those Dalkon Shield claimants who had not returned the first Court Questionnaire. This supplemental notice required that the Second Questionnaire be returned to the Clerk of the Bankruptcy Court no later than July 15, 1987 for domestic Dalkon Shield claimants' and August 12, 1987 for foreign Dalkon Shield claimants, and stated that failure to do so would bar the Dalkon Shield claimant from pursuing a claim, Approximately 21,000 Dalkon Shield claimants timely returned the Second Questionnaire.

By order entered July 10, 1987, the Court disallowed Dalkon Shield claims of domestic Dalkon Shield claimants who did not timely return the Court Questionnaire or the Second Ques-

tionnaire. The July 10, 1987 order provided, however, that the Court would entertain written requests for reconsideration of the order of disallowance if such requests were filed with the Bankruptcy Court on or before September 11, 1987. The Court has conducted hearings on such written requests.

A number of efforts were made primarily by the Claimants Committee seeking an order, pursuant to 11 U.S.C. § 1104 (1987), for the appointment of a Trustee to manage the A. H. Robins Company. After a full hearing, the Committee's motion was denied. The Court, though finding civil contempt, held that appointment of a Trustee was neither necessary nor desirable. As the United States Court of Appeals noted in this context, "a policy of flexibility pervades the bankruptcy code with the ultimate aim of protecting creditors." *Committee of Dalkon Shield Claimants v. A. H. Robins Co.*, 828 F.2d 239, 242 (4th Cir. 1987).

It should be noted, as well, that the Court's Examiner had diligently monitored the business activity of the Debtor, The Court was aware that, being the beneficiary of the stay imposed by 11 U.S.C. § § 362(a)(1) and 362(a)(3) as well as that imposed by the Court pursuant to 11 U.S.C. § 105 and 28 U.S.C. § 1334, *see Oberg v. Aetna Casualty & Surety Co.*, 828 F.2d 1023 (4th Cir. 1987), *cert. denied*, 108 S.Ct. 1246 (1988), the Debtor had once again become, at least under the umbrella of the stay, financially viable.

To have, in the absence of fraud or mismanagement, replaced the existing management with a Trustee would have been to expose thousands of potential claimants to danger of a financial disaster.

The Court was even then aware that the nature of the existing claims was such as to reasonably preclude payment by Robins, out of its profits, of sums sufficient to satisfy the outstanding claims in any reasonably foreseeable future.

The Court concluded, after many conferences (in excess of 225) on a myriad of issues, and formal argument by the parties, as well as having considered its Examiner's views, that only an estimation of the personal injury claims en masse would bring forth additional prospective purchasers or those interested in merging with Robins. The Court was of the view that any such party would not be willing to accept less than a cap on the value of the claims.

Interestingly, the Court's view in this regard appears to have been fortuitous for evidence recently presented establishes that the Debtor, under protection of the stay, had its greatest financial year in 1986 when its profits *before taxes* were approximately $172 million. As the Court will elaborate infra, the amount to be received under the Plan, which the Court finds fair and feasible, represents a figure which could not be recovered from Robins, from its profits, in decades, assuming, as the evidence shows cannot reasonably be assumed, Robins could remain economically viable. Indeed, under the present Plan, the sums available to Dalkon Shield claimants represent a figure in excess of the Company's liquidation value.

The Court concluded an estimation was appropriate—an action which Robins had been advocating since February 1986 and which the Equity Security Holders Committee had moved for on May 18, 1987.

Reasonably early on in the proceedings, the Court had appointed Professor Francis E. McGovern as the Court's expert to develop in cooperation with the Dalkon Shield Claimants' Committee, the Unsecured Creditors' Committee, the Future Claimants' Representative, the Equity Security Holders' Committee, Robins and Aetna, a reliable data base to aid in analyzing and determining the aggregate value of Dalkon Shield claims. Each of the foregoing parties, including Professor McGovern, retained experts to assist it in the col-

lection, evaluation and analysis of data regarding Dalkon Shield claims (the "Data Collection Process").

The Data Collection Process, which lasted over a year and a half, resulted in the compilation of an extensive data base which was made available to Robins, the Official Committees, Aetna, and their respective experts for their use in connection with the estimation motions.

The Estimation Hearing on the motions of Robins and the Equity Security Holders' Committee (the "Estimation Motions") was set for November 5, 1987, and notice of the Estimation Hearing and the matters to be considered at it was sent by the Clerk of the Court to all parties in interest.

The parties each conducted extensive discovery in preparation for the Estimation Hearing.

On November 5, 1987, the Estimation Hearing commenced and concluded on November 11. At the hearing, the parties in interest presented their estimates and were heard regarding the aggregate amount of Robins' Dalkon Shield liability and the propriety of a one claim/one vote procedure for voting purposes to determine whether a class or classes of Dalkon Shield claims had or had not accepted a plan. The Court heard extensive medical, statistical, epidemiological, and other expert testimony. Numerous briefs, memoranda and expert reports were submitted to the Court. Parties in interest requesting to be heard were heard.

The estimates of Robins, Aetna and the Official Committees were as follows:

Robins — $800 million to $1.3 billion
Equity Security Holders' Committee — $1.03 billion
Unsecured Creditors Committee — $1.54 billion

Dalkon Shield Claimants' Committee — $4.2 billion to $7.0 billion
Aetna — $2.2 billion to $2.5 billion

In addition, the expert retained by the Future Claimants' Representative, estimated the value of so-called "future claims" to be approximately $660 million over a fourteen year period.

During the course of the Estimation Hearing, the Court requested experts for various parties in interest to recalculate their estimates using various assumptions, different from those used by those experts in their original analyses.

The Court, having reviewed the testimony, arguments, expert reports, memoranda and briefs, and having observed the witnesses and considered the weight to be given to their respective testimony as developed by both direct and cross examination as well as the assumptions, methodology and reasoning employed by the parties in reaching their estimates and various legal theories for reinstatement of untimely filed claims, announced and now reconfirms its finding that the sum of $2.475 billion, payable over a reasonable period of time, is sufficient to pay in full all Dalkon Shield personal injury claims as well as expenses of the Trusts established to administer the claims (the "Estimate").

The viable claims now pending are in excess of 195,000, Any attempt to evaluate each individual claim for purposes of voting on the Debtor's Plan of Reorganization would, as a practical matter, be an act of futility, and would be so time consuming as to impose on many, many deserving claimants further intolerable delay all not only to their detriment, but to the detriment of the financial well being of the estate as well. The Court is intellectually and morally satisfied that the placing of a nominal value on each claim for voting purposes was

appropriate, and the Court so ordered under date of March 21, 1988. *Cf. Kane v. Johns-Manville Corp.*, 843 F.2d 636, 651 (2d Cir. 1988) (Miner, J., concurring) (delay entailed by estimation of individual claims for voting purposes would be fatal to plan and to recovery for claimants).

No offer approximating the Court's estimated $2.475 billion had been forthcoming until the Court's public announcement of its view. Within a matter of days, at least two offers were forthcoming.

By far, the offer by American Home Products Corporation (AHP), made in December 1987, was the highest and promised the quickest pay out to the claimants. AHP proposed a merger of Robins with its newly-acquired subsidiary, AHP Subsidiary (9) Corporation, premised upon (i) full payment of Dalkon Shield claimants in accordance with the Estimate, and (ii) the belief that AHP, AHP Subsidiary (9) Corporation, Robins, the Successor Corporation and their personnel would be freed from any involvement in litigation or claims regarding the Dalkon Shield. The Court deems AHP's concern in this regard to be well taken. An investment of the magnitude involved here requires all reasonable effort to, consistent with the law, end all Dalkon Shield litigation, including the class action against Aetna ("*Breland* matter").[1]

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[1]Seven Dalkon Shield claimants filed a complaint against Aetna in which they sought certification of a broad class of Dalkon Shield claimants. *Glenda Breland v. Aetna Casualty and Surety Company*, Civil Action No. 86-0315-R. The class was certified and the parties negotiated a settlement. An evidentiary hearing was held on the reasonableness, adequacy and fairness of the proposed settlement. The Court subsequently studied the affidavits and exhibits submitted and determines that the proposed settlement is reasonable, adequate, fair and in the best interests of Breland plaintiffs. An order and a memorandum will issue shortly.

A "Qualified *Breland* Settlement" is a condition precedent to the Debtor's Plan of Reorganization.

In connection with the "Qualified *Breland* Settlement" and the Plan, Robins and Aetna will mutually release each other from claims relating to the Aetna insurance, Aetna's Proof of Claim will be disallowed, and Aetna will provide monies and insurance policies pursuant to the terms of a Qualified Breland Settlement, all of which, in the Court's view, will add to the sums available to Dalkon Shield claimants.

The compensation available for Dalkon Shield claims pursuant to the Plan and the merger with AHP Subsidiary (9) Corporation exceeds the Estimate as well as the liquidation value of the Debtor.

AHP is primarily engaged in the health care, pharmaceutical and consumer product business. For the year 1987, AHP had sales in excess of $5 billion and net income in excess of $845 million. In the first quarter of 1988, AHP had in excess of $1 billion in available cash or cash equivalents. AHP has in place a $2 billion line of credit with a group of major money center banks which will be available to meet funding obligations under the Plan. At the end of the first quarter of 1988, Robins had approximately $375 million in available cash. After notice and hearing, and authorization by the District Court, Robins, AHP, and AHP Subsidiary (9) Corporation executed and delivered the merger agreement annexed to the Plan as of March 21, 1988.

The Plan

Robins filed its Fifth Amended and Restated Plan of Reorganization and its Fifth Amended and Restated Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code (the "Fifth Amended Disclosure Statement") on February 11, 1988.

Robins gave in excess of 30 days written notice of the March

21, 1988 date for the hearing on the adequacy of the Fifth Amended Disclosure Statement to all parties entitled to receive notice pursuant to Bankruptcy Rule 3017(a) and the orders of this Court.

In response to certain objections filed to the Fifth Amended Disclosure Statement, and pursuant to negotiations among the major parties-in-interest in Robins' reorganization case, Robins agreed to modify the Fifth Amended Disclosure Statement.

Robins filed its Sixth Amended and Restated Disclosure Statement pursuant to Section 1125 of the Bankruptcy Code (the "Disclosure Statement"), incorporating those modifications, on March 28, 1988, Robins filed its Sixth Amended and Restated Plan of Reorganization (the "Plan") on the same date.

After notice and a hearing on March 21, 1988, the District Court approved the Disclosure Statement as containing adequate information as defined in Section 1125 of the Bankruptcy Code by order dated April 1, 1988 (*nunc pro tunc*) (the "Disclosure Statement Order").

On or before April 25, 1988, Robins transmitted copies of (a) the Disclosure Statement (including the plan as an exhibit thereto), (b) the "Notice of Hearing on (i) Confirmation of Debtor's Plan of Reorganization, (ii) Debtor's Request for Disallowance of Punitive Damages, and (iii) other matters set forth in Section 7.02(a) of Debtor's Plan of Reorganizaton" (the "Notice of Confirmation Hearing"), (c) the Disclosure Statement order (without Exhibit A), (d) the Court's March 21, 1988 "Order Temporarily Allowing and Estimating Dalkon Shield Claims for Voting Purposes Only" (the "Voting Order"), (e) letters from the United States District Court, the Official Committee of Dalkon Shield Claimants, Robins,

the Official Unsecured Creditors' Committee, and counsel to the Official Committee of Equity Security Holders (the "Letters"), and (f) ballots for the purpose of voting to accept or reject the Plan ("Ballots") to all Dalkon Shield Claimants, creditors and equity security holders as provided in the Disclosure Statement Order and the Court's April 18, 1988 "Order Under Bankruptcy Rule 3018 Authorizing Class Representatives to Accept or Reject Plan on Behalf of Class Action Plaintiffs" (the "Ross Order").

Robins filed and transmitted to holders of untimely filed Class 3A Dalkon Shield claims an "Objection and Notice of Hearing on Objection of A. H. Robins Company, Incorporated, Debtor and Debtor-in-Possession, Under 11 U.S.C. § 502(a) and Bankruptcy Rules 3003(c)(2) and 3007 to Certain Untimely Dalkon Shield Claims" (the "Late Claim Objection"), seeking an order disallowing certain untimely filed Class 3A Dalkon Shield Claims and providing that holders of such claims are barred from voting such claims on the Plan.

Robins filed and transmitted to holders of timely filed and untimely filed Class 3A and 38 Dalkon Shield claims an "Objection and Notice of Hearing on Objection of A. H. Robins Company, Incorporated, Debtor and Debtor-in-Possession, Under U.S.C, § 502(a) and Bankruptcy Rule 3007 to Dalkon Shield Claims" (the "Punitive Damage and General Objection"), seeking an order providing that any portion of any unliquidated Dalkon Shield claim that is or may be for punitive or similar damages is disallowed and that no Dalkon Shield claim is allowed except and to the extent provided for in the Plan and the Voting Order. Robins served the Punitive Damage and General Objection on holders of timely filed Class 3A and 38 Dalkon Shield claims along with the Disclosure Statement and related materials described in paragraph 7 above on or before April 25, 1988.

The Notice of Confirmation hearing was transmitted to *Breland* Class B members in connection with the mailing done by the *Breland* plaintiffs, as described in the report filed with the Court on July 6, 1988.

Robins gave supplemental publication notice of the confirmation hearing and matters to be considered at it in accordance with this Court's order of April 29, 1988 as modified by order dated May 18, 1988 (the "Publication Notice Order").

On or before June 16, 1988, Robins transmitted the Notice of Confirmation Hearing and the Disclosure Statement to various persons who are parties to unexpired leases or executory contracts with Robins.

Robins transmitted copies of the "Notice of the Date On or Before Which Each Person Retained or That May Request Compensation and/or Reimbursement of Expenses in This Case Pursuant to Sections 327, 328, 330, 503(b) or 1103 of The Bankruptcy Code Must File a Binding Estimate of the Maximum Amount of Allowance of Compensation and Reimbursement of Expenses to be Requested in This Case" (the "Fee Cap Notice") to various persons retained, or that might seek compensation or reimbursement of expenses from the Debtor's estate pursuant to Sections 327, 328, 330, 503(b) or 1103 of the Code (the "Noticed Professionals") pursuant to the Court's June 13, 1988 "Order Establishing and Approving Form and Method of Notice of The Date On or Before Which Each person Retained or That May Request Compensation and/or Reimbursement of Expenses in This Case Pursuant to Section 327, 328, 330, 503(b) or 1103 of The Bankruptcy Code Must File a Binding Estimate of The Maximum Amount of Allowance of Compensation and Reimbursement of Expenses To be Requested in This Case" (the "Fee Cap Order").

Ballots for the acceptance or rejection of the Plan were not solicited prior to entry of the Disclosure Statement Order or after July 11, 1988.

Certification of the results of the balloting by The Corporation Trust Company ("CT") and Robins were filed with this Court on July 18, 1988.

Various objections to confirmation of the Plan (raising, among other things, challenges to the jurisdiction of this Court to grant the relief provided for in the Plan and the order confirming the plan, the releases and injunctions provided for in the Plan, the disallowance of punitive damages, and the treatment of Dalkon Shield claims and equity interests under the Plan) were filed, litigated and considered by this Court.

A number of objections were filed on behalf of claimants who actually voted in favor of the proposed Plan or who did not vote. While Robins objected to the standing of these objections, the Court, nevertheless, gave them full consideration.

After the conclusion of voting on the Plan, Robins filed certain technical modifications to the Plan on July 15, 1988 and served a "Motion Pursuant to Bankruptcy Rule 3019 for an Order Finding that the Sixth Amended and Restated Plan of Reorganization purposed by A. H. Robins Company, Incorporated, Debtor and Debtor-in-Possession, As Technically Modified, Does Not Adversely Affect Treatment of Claims or Interests") (the "Technical Modification Motion"), on July 15, 1988. The modifications to the Claimants Trust, the Claims Resolution Facility and Sections 4.03, 5.01 and 6.07 of the Plan set forth in the Technical Modification Motion (a) permit the creation of the Claimants Trust before the Consummation Date so that the "start-up" payment contemplated by Section 6.07 of the Plan can be made and administered and (b) contain other technical corrections. There have been no

modifications which adversely affect the treatment of claims or interests under the Plan. The Court concludes that the modifications do not require resolicitation of acceptances or rejections, nor do they require that holders of claims or interest be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

The Plan, incorporating the merger agreement with AHP and AHP Subsidiary (9) Corporation, is the first consensual agreement in this case for the treatment of all claims and interests. The Plan is truly the considered result of long and dedicated negotiations between Robins, AHP, and the official committees. Assisting as well was the Court's Examiner and when called upon, the Court.

The Plan has been accepted overwhelmingly in writing by the creditors and security holders whose acceptance is required by law in accordance with the special voting procedures approved by this Court's Ross Order and Voting Order. Over 140,000 votes, approximately 72% of the total class, were cast in regard to Class 3A claims (Dalkon Shield Personal Injury Claims). Ballots accepting the Plan were timely received from 94.38% of all Dalkon Shield claimants who voted, representing more than two-thirds in number and amount of that class.

With respect to Class 3B claims (Dalkon Shield Other Claims), ballots accepting the Plan were timely received from 97.91% of all Dalkon Shield claimants actually voting in such class, representing more than two-thirds in number and amount of that class.

With respect to Class 8 Claims (Financial Institution Claims), ballots accepting the Plan were timely received from holders of at least two-thirds in amount and more than one-half in number of creditors actually voting in such class.

With respect to Class 9 Claims (Securities Claims), a ballot accepting the Plan was timely received from the official class representative of the plaintiff class in the Ross Case, such ballot representing one-hundred percent in amount and number of creditors in such class pursuant to the Ross Order.

With respect to Class 10 Interests (Common Stock Interests), ballots accepting the plan were timely received from holders of at least two-thirds in amount of equity security interests actually voting in such class.

With respect to Class 11 Interests (Common Stock Option Interests), ballots accepting the plan were timely received from holders of at least two-thirds in amount of equity security interests actually voting in such class.

With respect to all other classes, they are not impaired.

The Plan complies with the applicable provisions of the Code.

Robins solicited acceptances of the Plan in good faith.

The identity, qualifications, and affiliations of the persons who are to be directors or officers, or voting trustees, if any, of Robins or of the Successor Corporation after confirmation of the Plan have been fully disclosed, to the extent known, and the appointment of such persons to such offices, or their continuance therein, is consistent with the interests of Robins' creditors and equity security holders and with public policy.

The identity of any insider that will be employed or retained by Robins or the Successor Corporation and his or her compensation have, to the extent known, been fully disclosed. No determination at this time has been made to change Robins' existing management or compensation structure immediately after the Confirmation Date.

As the Court has concluded, the instant Plan, unlike a usual

conversion to Chapter 7 for liquidation, will afford all creditors' payment in full and each holder of a claim or interest will receive or retain under the Plan property of a value, as of the Effective Date, that not only is as much as the amount that such holder would receive or retain if Robins were liquidated under Chapter 7 of the Bankruptcy Code on that date but substantially more.

The payments into the Trusts provided for under Sections 5.01(b), 5.02(b) and 6.07 of the Plan are sufficient to pay all Allowed Dalkon Shield Personal Injury Claims, Allowed Dalkon Shield Liquidated claims and costs and expenses of the Trusts in full.

All fees payable under 28 U.S.C. § 1930 have been paid, and there are no rate changes provided for in the Plan that require the approval of any governmental regulatory commission. A conversion to Chapter 7 would be financially inexpedient to both the Debtor and the creditors in that it would have a negative effect on employees' morale and ability to maintain market share, hence diluting the value of operating assets.

The Robins Family Contribution is valuable consideration for the releases contained in Section 8.03 of the Plan, the injunction provided in Section 8.04 of the Plan, other terms and conditions of the Plan, and the benefits of the Other Claimants Trust.

The moneys and insurance policies anticipated to be contributed by Aetna pursuant to the terms of the Qualified *Breland* Settlement constitute valuable consideration for the inclusion of Aetna within the scope and protection of the releases contained in Section 8.03 of the Plan and the injunction provided in Section 8.04 of the Plan.

The scope and protection of the releases and injunctions provided in Section 8.03 and 8.04 of the Plan are necessary and essential to avoid irreparable harm to the estate.

On June 13, 1988, this Court entered the Fee Cap Order capping the aggregate amount of Fee Claims of Noticed Professionals at the amounts set forth in the binding estimates filed by them on or before July 13, 1988, in accordance with the Fee Cap Order.

The equitable treatment of all Dalkon Shield Personal Injury Claimants, rehabilitation of the Debtor, and the success of the merger with AHP Subsidiary (9) Corporation requires the absolute termination of piecemeal litigation relating to or arising from the Dalkon Shield and the creation of a single facility.

The Plan and the transactions contemplated by it do not provide for and, when consummated, will not constitute the liquidation of all or substantially all of the property of the Debtor's estate.

The releases and injunction provided in Section 8.03 and 8.04 of the Plan (collectively, the "Channeling Provisions") are an integral part of the compromises and settlements incorporated in the Plan. They are essential to the viability of the merger with AHP Subsidiary (9) Corporation and the post confirmation operations of that corporation and provide for the successful implementation of the Plan and provide equality of treatment of similarly situated creditors, reorganization of and a "fresh start" for the Debtor, and a consensual plan of reorganization.

Feasibility

Section 1129 of the Code authorizes confirmation of a plan only upon inclusion therein of specified conditions.

The Court is satisfied that the instant Plan encompasses each of the § 1129 requirements and each has been addressed.

A fair reading of the Plan discloses that the feasibility of same is premised on continuing supervision by the Court of each of the Trusts. Feasibility of this Plan and the law requires this supervision to assure the accuracy of the Court's estimate, the full payment of all Dalkon Shield personal injury claims and allowed Dalkon Shield liquidated claims and to reduce the threat of personal liability of the Trustees and personnel of the Trusts. After the Trusts are established, the Trusts will operate independently of Robins and the duties of the Official Committee of Dalkon Shield Claimants and of the Future Claimants' Representative will have terminated except with respect to appeals, fee applications, and matters related to proposed modifications of the plan. Under these circumstances, supervision of the Trusts by the Court is necessary and appropriate. Court supervision of the Trusts is sufficient under the facts of this case in that the Court is empowered under the law to approve all payments by the Trusts for services, costs and expenses in connection with the administration of the Trusts and to approve the employment by the Trusts of professionals and administrators, and otherwise to supervise the Trusts as provided for or allowed by the Plan and applicable law.

Sections 105, 1129(a)(4), and 1142 of the Bankruptcy Code and Sections 157 and 1334 of Title 28 of the United States Code as well as principles of equity empower and require the Court to maintain a continuing supervision in the manner aforesaid.

Additionally, the Court's supervision of the Trusts is consistent with the Plan and the Trusts. Section 3.03(c) of the Claimants Trust empowers the Court to remove Trustees of the Claimants Trust without a showing of cause. Section 3.04(a) of the Claimants Trust empowers the Court to appoint a successor Trustee of its own nomination if the remaining Trustees fail to nominate a successor Trustee that is approv-

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Summary

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reorganization of the debt

Section 1111(b)(2) of th
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eed, and liquidation or further
r after confirmation is not likely.

Bankruptcy Code does not apply
and no election pursuant to that
this case.

ter asserting any right to payment
or in any manner arising from any
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vas inserted before the commence-

ar date in this case was essential
of a plan of reorganization and the
reorganization case.

t to the Plan, claims filed after the
e Court should be disallowed.

by Robins to the Successor Cor-
egal, valid and effective transfers
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perty free and clear of all liens,
nces, or interests, except as ex-
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erritory or possession thereof or
sed, in whole or in part, directly

or indirectly, on any theory of law, including, without limitation, any theory of successor or transferee liability.

Robins' insurance policies, and the coverage thereunder, are property of the Debtor's estate under 11 U.S.C. § 541.

For the reasons set forth in the opinion to follow, unliquidated claims for punitive damages are disallowed.

Based on the facts of this case, in a hypothetical liquidation of the debtor under Chapter 7 of the Bankruptcy Code, no proceeds would be available for the payment of punitive damages or distribution to shareholders.

Nothing in the Bankruptcy Code, however, precludes payments in lieu of punitive or similar damages as part of a confirmed plan of reorganization as has been accepted by all impaired classes of claims and interests affected thereby.

Section 1334 of Title 28, Section 105 of the Bankruptcy Code and the general equitable powers of this Court confer upon it jurisdiction to enjoin proceedings in other courts, enjoin parties from commencing or continuing litigation, and to otherwise approve the channelling provisions in order to ensure: (i) the efficient administration of Robins' estate; (ii) the efficient administration of the Trusts; (iii) the systematic evaluation and payment of Dalkon Shield claims in an orderly, fair manner, applying the same rules to all; (iv) that the bulk of the funds in both Trusts are made available for the payment of Dalkon Shield personal injury claims pursuant to the same method of claims evaluation; (v) minimization of expenditures and transaction costs payable from the Other Claimants Trust, for protracted litigation of questionable value against third parties; (vi) successful consummation of the Plan; (vii) that Dalkon Shield personal injury claimants do not bypass the Claims Resolution Facility, to the detriment of other Dalkon Shield personal injury claimants; (viii) equality of distribution to Dalkon

Shield personal injury claimants; and (ix) rehabilitation and reorganization of Robins, free from direct and indirect involvement in further Dalkon Shield litigation.

Payments on liquidated claims or to holders of equity security interests before unliquidated and/or disputed claims are liquidated are, in this instance, appropriate and do not violate the Bankruptcy Code.

The Court should and does accept the business judgment of the Debtor regarding the assumption of executory contracts absent unusual circumstances which are not present here.

In order to effectuate the Plan and provide for finality, the Court may allow indemnification, contribution, or reimbursement claims and provide that said claims be satisfied by the Other Claimants Trust and by the protection of the releases and injunctions.

Assumption and assignment of Robins' outstanding executory contracts and unexpired leases are in the best interest of the estate.

The "absolute priority rule" and the other provisions of 11 U.S.C. § 1129(b) are inapplicable to this confirmation.

The modifications to the Plan set forth in the Technical Modification Motion are technical changes required to correct typographical errors and to provide that the $100 million start-up payment and distributions contemplated by Section 6.07 of the Plan and described in the Disclosure Statement can be made and implemented. As such, those modifications do not require that holders of claims or interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan.

The AHP Common Stock to be issued in exchange for Robins Common Stock under the Plan is exempt from registra-

tion under state and federal law pursuant to section 1145(a)(1) of the Bankruptcy Code.

Except as provided in the Plan and Confirmation Order, the confirmation of the Plan will enjoin the commencement or continuation of any action, the employment of any process, and the doing of any act to collect, recover or offset any debt discharged by the Confirmation Order, by the Plan or by section 1141(d) of the Bankruptcy Code as a personal liability of Robins or its affiliates, or from property of Robins or its affiliates, whether or not discharge of any such debt is waived.

By virtue of confirmation of the plan, any judgment at any time obtained will be void to the extent that such judgment is a determination of the personal liability of Robins with respect to any debt discharged by the Confirmation Order, by the Plan, or by Section 1141(d) of the Bankruptcy Code, whether or not discharge of any such debt is waived.

Upon entry of the Confirmation Order, the terms of the Plan will be binding upon Robins, the Successor Corporation, the Trusts and any and all creditors and equity security holders of Robins, whether or not the claims or interests of such creditors or equity security holders are impaired under the Plan and whether or not such creditors or equity security holders have accepted the Plan.

Pursuant to Section 1146(c) of the Bankruptcy Code, the issuance, transfer or exchange of a security under the Plan or the revesting, transfer or sale of any real or personal property of Robins in accordance with the Plan will not be taxes under any state or local law imposing a stamp tax, transfer tax or similar tax.

This Court, as a court of equity whose jurisdiction is governed by equitable principles, and pursuant to Section 105 of the Bankruptcy Code, has the constitutional and statutory power

and authority to issue and enter the injunction and releases contained in the Plan. Due and timely notice of the injunction and releases has been given in a manner reasonably calculated under all the circumstances to apprise all those affected by the Plan and the Confirmation Order of the pendency of the hearing to consider the Plan, including the injunction and releases included therein, and afford all interested parties an opportunity to present their objections.

The Court may and will exercise its equitable power and authority to issue injunctive relief where there is a basis for concluding that reorganization or rehabilitation of Robins might be undermined and frustrated by the actions sought to be enjoined.

The Court has the power and duty to shift through the surrounding circumstances to prevent injustice or unfairness and has the power to and will, if required, create new remedies where those at law are inadequate.

The Court has the equitable and inherent power and authority to channel claims to a specific *res* and may limit the direct or indirect prosecution of such claims against Robins and prohibit parties in interest from attempting to circumvent the Plan and the orders of this Court.

In exercising its inherent equitable powers, the Court will, where justified, grant injunctive relief to prevent direct or indirect interference with the administration of the estate and facilitate the Robins reorganization effort to enable Robins to achieve the ultimate objectives of Chapter 11, reorganization and rehabilitation. The Court may enjoin or otherwise limit future litigation associated with this case that could undermine and/or frustrate the Plan or Robins' reorganization.

The foregoing constitutes the Court's findings of fact and conclusions of law. The provisions of the Order of Confirmation are non-severable and mutually dependant.

An appropriate Order will issue.

/s/ Robert R. Merhige, Jr.
United States District Judge

/s/ Blackwell M. Shelley
United States Bankruptcy Judge

Date *July 25, 1988*

JUDGEMENT

UNITED STATES COURT OF APPEALS
for the
Fourth Circuit

FILED
JUNE 16 1989
U.S. Court of Appeals
Fourth Circuit

No. 88-1750

In Re: A. H. ROBINS COMPANY, INCORPORATED

Debtor

ROSEMARY MENARD-SANFORD; KAREN VALENZUELA; CONSTANCE MILLER ENGELSBERG; NANCY LAURI ADAMS; CAROLYN HARRIS

Claimants—Appellants

v.

RALPH R. MABEY; THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS; THE OFFICIAL UNSECURED CREDITORS COMMITTEE OF A. H. ROBINS COMPANY, INCORPORATED; STANLEY K. JOYNES, III, Legal Representative of the Future Tort Claimants of A. H. Robins Company, Incorporated;

Parties-in-interest

A. H. ROBINS COMPANY, INCORPORATED

Debtor—Appellee

No. 88-1754

In Re: A. H. ROBINS COMPANY, INCORPORATED

Debtor

DONNA OBERG, et al

Claimant - Appellant

v.

THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS; THE OFFICIAL UNSECURED CREDITORS COMMITTEE OF A. H. ROBINS COMPANY, INCORPORATED; STANLEY K. JOYNES, III, Legal Representative of the Future Tort Claimants of A. H. Robins Company, Incorporated;

Parties-in-interest

A. H. ROBINS COMPANY, INCORPORATED

Debtor—Appellee

No. 88-1756

In Re: A. H. ROBINS COMPANY, INCORPORATED

Debtor

ALBERT L. SIVLEY

Claimant—Appellant

v.

THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS; THE OFFICIAL UNSECURED CREDITORS COMMITTEE OF A. H. ROBINS COMPANY, INCORPORATED; RALPH R. MABEY; STANLEY K. JOYNES, III, Legal Representative of the Future Tort Claimants of A. H. Robins Company, Incorporated;

Parties-in-interest

A. H. ROBINS COMPANY, INCORPORATED

Debtor—Appellee

No. 88-1758

In Re: A. H. ROBINS COMPANY, INCORPORATED

Debtor

DIANA BROSCO; CATHERINE CRAWFORD; MARY FISCHER, et al

Claimants—Appellants

v.

THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS; THE OFFICIAL UNSECURED CREDITORS COMMITTEE OF A. H. ROBINS COMPANY, INCORPORATED; RALPH R. MABEY; STANLEY K. JOYNES, III, Legal Representative of the Future Tort Claimants of A. H. Robins Company, Incorporated;

Parties-in-interest

A. H. ROBINS COMPANY, INCORPORATED

Debtor—Appellee

No. 88-1759

In Re: A. H. ROBINS COMPANY, INCORPORATED

Debtor

LYNN SCOTT; CAROL LOPEZ, et al

Claimants—Appellants

v.

THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS; THE OFFICIAL UNSECURED CREDITORS COMMITTEE OF A. H. ROBINS COMPANY, INCORPORATED; RALPH R. MABEY; STANLEY K. JOYNES, III, Legal Representative of the Future Tort Claimants of A. H. Robins Company, Incorporated;

Parties-in-interest

A. H. ROBINS COMPANY, INCORPORATED

Debtor—Appellee

No. 88-1760

In Re: A. H. ROBINS COMPANY, INCORPORATED

Debtor

ELAINE CUMLEY; LAURA JONES; JEAN ABAD, et al

Claimants—Appellants

v.

THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS; THE OFFICIAL UNSECURED CREDITORS COMMITTEE OF A. H. ROBINS COMPANY, INCORPORATED; RALPH R. MABEY; STANLEY K. JOYNES, III, Legal Representative of the Future Tort Claimants of A. H. Robins Company, Incorporated;

Parties-in-interest

A. H. ROBINS COMPANY, INCORPORATED

Debtor—Appellee

No. 88-1763

In Re: A. H. ROBINS COMPANY, INCORPORATED

Debtor

ALEXIA ANDERSON, et al

Claimant—Appellant

v.

STANLEY K. JOYNES, III, Legal Representative of the Future Tort Claimants of A. H. Robins Company, Incorporated; THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS; THE OFFICIAL UNSECURED CREDITORS COMMITTEE OF A. H. ROBINS COMPANY, INCORPORATED; RALPH R. MABEY;

Parties-in-interest

A. H. ROBINS COMPANY, INCORPORATED

Debtor—Appellee

No. 88-3602

In Re: A. H. ROBINS COMPANY, INCORPORATED

Debtor

ALEXIA ANDERSON, et al

Claimant—Appellant

v.

THE OFFICIAL UNSECURED CREDITORS COMMITTEE OF A. H. ROBINS COMPANY, INCORPORATED; THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS; RALPH R. MABEY; STANLEY K. JOYNES, III, Legal Representative of the Future Tort Claimants of A. H. Robins Company, Incorporated;

Parties-in-interest

A. H. ROBINS COMPANY, INCORPORATED

Debtor -Appellee

APPEALS FROM the United States District Court for the Eastern District of Virginia.

THIS CAUSE came on to be heard on the record from the United States District Court for the Eastern District of Virginia, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed.

/s/ John M. Graecen
CLERK
